

**59-10-101. Short title.**

This chapter is known as the "Individual Income Tax Act."

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-103. Definitions.**

- (1) As used in this chapter:
  - (a) "Adjusted gross income":
    - (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or
    - (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.
  - (b) "Corporation" includes:
    - (i) an association;
    - (ii) a joint stock company; and
    - (iii) an insurance company.
  - (c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.
  - (d) "Employee" is as defined in Section 59-10-401.
  - (e) "Employer" is as defined in Section 59-10-401.
  - (f) "Federal taxable income":
    - (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or
    - (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and (b), Internal Revenue Code.
  - (g) "Fiduciary" means:
    - (i) a guardian;
    - (ii) a trustee;
    - (iii) an executor;
    - (iv) an administrator;
    - (v) a receiver;
    - (vi) a conservator; or
    - (vii) any person acting in any fiduciary capacity for any individual.
  - (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).
  - (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
  - (j) "Individual" means a natural person and includes aliens and minors.
  - (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust.
  - (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.
  - (m) "Nonresident individual" means an individual who is not a resident of this state.

(n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization:

(A) through or by means of which any business, financial operation, or venture is carried on; and

(B) which is not, within the meaning of this chapter:

(I) a trust;

(II) an estate; or

(III) a corporation.

(ii) "Partnership" does not include any organization not included under the definition of "partnership" in Section 761, Internal Revenue Code.

(iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(o)(i).

(p) "Qualified nongrantor charitable lead trust" means a trust:

(i) that is irrevocable;

(ii) that has a trust term measured by:

(A) a fixed term of years; or

(B) the life of a person living on the day on which the trust is created;

(iii) under which:

(A) a portion of the value of the trust assets is distributed during the trust term:

(I) to an organization described in Section 170(c), Internal Revenue Code; and

(II) as a:

(Aa) guaranteed annuity interest; or

(Bb) unitrust interest; and

(B) assets remaining in the trust at the termination of the trust term are distributed to a beneficiary:

(I) designated in the trust; and

(II) that is not an organization described in Section 170(c), Internal Revenue Code;

(iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue Code; and

(v) under which the grantor of the trust is not treated as the owner of any portion of the trust for federal income tax purposes.

(q) (i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(B) an individual who is not domiciled in this state but:

(I) maintains a place of abode in this state; and

(II) spends in the aggregate 183 or more days of the taxable year in this state.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what constitutes spending a day of the taxable year in the state.

(r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

(s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.

(t) "State income tax percentage for a nonresident estate or trust" means a percentage equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the nonresident estate's or trust's total adjusted gross income for that taxable year after making the adjustments required by:

- (i) Section 59-10-202;
- (ii) Section 59-10-207;
- (iii) Section 59-10-209.1; or
- (iv) Section 59-10-210.

(u) "State income tax percentage for a nonresident individual" means a percentage equal to a nonresident individual's state taxable income for the taxable year divided by the difference between:

(i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross income for that taxable year, after making the:

- (A) additions and subtractions required by Section 59-10-114; and
- (B) adjustments required by Section 59-10-115; and

(ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember, the compensation the servicemember receives for military service if the servicemember is serving in compliance with military orders.

(v) "State income tax percentage for a part-year resident individual" means, for a taxable year, a fraction:

(i) the numerator of which is the sum of:

(A) subject to Section 59-10-1404.5, for the time period during the taxable year that the part-year resident individual is a resident, the part-year resident individual's total adjusted gross income for that time period, after making the:

- (I) additions and subtractions required by Section 59-10-114; and
- (II) adjustments required by Section 59-10-115; and

(B) for the time period during the taxable year that the part-year resident individual is a nonresident, an amount calculated by:

(I) determining the part-year resident individual's adjusted gross income for that time period, after making the:

- (Aa) additions and subtractions required by Section 59-10-114; and
- (Bb) adjustments required by Section 59-10-115; and

(II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I) that is derived from Utah sources in accordance with Section 59-10-117; and

(ii) the denominator of which is the difference between:

(A) the part-year resident individual's total adjusted gross income for that taxable year, after making the:

- (I) additions and subtractions required by Section 59-10-114; and
- (II) adjustments required by Section 59-10-115; and

(B) if the part-year resident individual is a servicemember, any compensation the servicemember receives for military service during the portion of the taxable year that the servicemember is a nonresident if the servicemember is serving in compliance with military orders.

(w) "Taxable income" or "state taxable income":

(i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:

(A) additions and subtractions required by Section 59-10-114; and

(B) adjustments required by Section 59-10-115;

(ii) for a nonresident individual, is an amount calculated by:

(A) determining the nonresident individual's adjusted gross income for the taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117;

(iii) for a resident estate or trust, is as calculated under Section 59-10-201.1;

and

(iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

(x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust, that has income subject in whole or part to the tax imposed by this chapter.

(y) "Trust term" means a time period:

(i) beginning on the day on which a qualified nongrantor charitable lead trust is created; and

(ii) ending on the day on which the qualified nongrantor charitable lead trust described in Subsection (1)(y)(i) terminates.

(z) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:

(i) Hagen v. Utah, 510 U.S. 399 (1994); and

(ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

(aa) "Unadjusted income" means an amount equal to the difference between:

(i) the total income required to be reported by a resident or nonresident estate or trust on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(ii) the sum of the following:

(A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

(I) for administering the resident or nonresident estate or trust; and

(II) that the resident or nonresident estate or trust deducts as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(B) the income distribution deduction that a resident or nonresident estate or trust deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(C) the amount that a resident or nonresident estate or trust deducts as a deduction for estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(D) the amount that a resident or nonresident estate or trust deducts as a personal exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year.

(bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

(cc) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(ee) "Wages" is as defined in Section 59-10-401.

(2) (a) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required.

(b) Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or other provisions of the laws of the United States relating to federal income taxes that are in effect for the taxable year.

(c) Any reference to a specific section of the Internal Revenue Code or other provision of the laws of the United States relating to federal income taxes shall include any corresponding or comparable provisions of the Internal Revenue Code as amended, redesignated, or reenacted.

Amended by Chapter 202, 2010 General Session

**59-10-103.1. Information to be contained on individual income tax returns or booklets.**

(1) The commission shall print the phrase "all state income tax dollars fund education" on:

(a) the first page of an individual income tax return; and

(b) the cover page of an individual income tax forms and instructions booklet.

(2) The commission shall include on an individual income tax return a statement for a property owner to declare that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence.

Amended by Chapter 410, 2011 General Session

**59-10-104. Tax basis -- Tax rate -- Exemption.**

(1) For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.

(2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the product of:

(a) the resident individual's state taxable income for that taxable year; and

(b) 5%.

(3) This section does not apply to a resident individual exempt from taxation under Section 59-10-104.1.

Amended by Chapter 389, 2008 General Session

**59-10-104.1. Exemption from taxation.**

(1) For purposes of this section:

(a) "Personal exemptions" means the total exemption amount an individual is allowed to claim for the taxable year under Section 151, Internal Revenue Code, for:

- (i) the individual;
- (ii) the individual's spouse; and
- (iii) the individual's dependents.

(b) "Standard deduction":

(i) means the standard deduction an individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code; and

(ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount allowed under Section 63(f), Internal Revenue Code, for an individual or an individual's spouse who is:

- (A) blind; or
- (B) 65 years of age or older.

(2) For taxable years beginning on or after January 1, 2002, an individual is exempt from a tax imposed by Section 59-10-104 or 59-10-116 if the individual's adjusted gross income on the individual's federal individual income tax return for the taxable year is less than or equal to the sum of the individual's:

- (a) personal exemptions for that taxable year; and
- (b) standard deduction for that taxable year.

Amended by Chapter 389, 2008 General Session

**59-10-110. Disallowance of federal tax credits.**

A credit applied directly to the income tax calculated for federal income tax purposes in accordance with the Internal Revenue Code may not be applied in calculating the tax due under this chapter.

Amended by Chapter 389, 2008 General Session

**59-10-114. Additions to and subtractions from adjusted gross income of an individual.**

(1) There shall be added to adjusted gross income of a resident or nonresident individual:

(a) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(b) the amount of a child's income calculated under Subsection (4) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(c) (i) a withdrawal from a medical care savings account and any penalty imposed for the taxable year if:

(A) the resident or nonresident individual does not deduct the amounts on the resident or nonresident individual's federal individual income tax return under Section 220, Internal Revenue Code;

(B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

(C) the withdrawal is:

(I) subtracted on a return the resident or nonresident individual files under this chapter for a taxable year beginning on or before December 31, 2007; or

(II) used as the basis for a resident or nonresident individual to claim a tax credit under Section 59-10-1021;

(ii) a disbursement required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(3); or

(iii) an amount required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(5)(c);

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident individual who is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident individual who is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section 53B-8a-102; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident individual:

(I) who is the account owner; and

(II) on the resident or nonresident individual's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident individual who is the account owner to claim a tax credit under Section 59-10-1017;

(e) except as provided in Subsection (5), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a political subdivision of a state other than this state; or

(iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through (iii);

(f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

(g) any distribution received by a resident beneficiary of a nonresident trust of

undistributed distributable net income realized by the trust on or after January 1, 2004, if that undistributed distributable net income was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by any state, with undistributed distributable net income considered to be distributed from the most recently accumulated undistributed distributable net income; and

(h) any adoption expense:

(i) for which a resident or nonresident individual receives reimbursement from another person; and

(ii) to the extent to which the resident or nonresident individual subtracts that adoption expense:

(A) on a return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) from federal taxable income on a federal individual income tax return.

(2) There shall be subtracted from adjusted gross income of a resident or nonresident individual:

(a) the difference between:

(i) the interest or a dividend on an obligation or security of the United States or an authority, commission, instrumentality, or possession of the United States, to the extent that interest or dividend is:

(A) included in adjusted gross income for federal income tax purposes for the taxable year; and

(B) exempt from state income taxes under the laws of the United States; and

(ii) any interest on indebtedness incurred or continued to purchase or carry the obligation or security described in Subsection (2)(a)(i);

(b) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation;

(c) an amount received by a resident or nonresident individual or distribution received by a resident or nonresident beneficiary of a resident trust:

(i) if that amount or distribution constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(ii) to the extent that amount or distribution is included in adjusted gross income for that taxable year on the federal individual income tax return of the resident or nonresident individual or resident or nonresident beneficiary of a resident trust;

(d) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in adjusted gross income on that resident or nonresident individual's federal individual income tax return



for that taxable year; and

(e) an amount:

(i) received by an enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:

(A) federal law;

(B) a treaty; or

(C) a final decision issued by a court of competent jurisdiction.

(3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (3).

(b) The agreement described in Subsection (3)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(b); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(b);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (3) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.

(4) (a) For purposes of this Subsection (4), "Form 8814" means:

(i) the federal individual income tax Form 8814, Parents' Election To Report Child's Interest and Dividends; or

(ii) (A) a form designated by the commission in accordance with Subsection

(4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(b) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

(5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be added to adjusted gross income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(e)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

Amended by Chapter 6, 2010 General Session

**59-10-115. Adjustments to adjusted gross income.**

(1) The commission shall allow an adjustment to adjusted gross income of a resident or nonresident individual if the resident or nonresident individual would otherwise:

(a) receive a double tax benefit under this part; or

(b) suffer a double tax detriment under this part.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to adjusted gross income required by Subsection (1).

Amended by Chapter 382, 2008 General Session  
Amended by Chapter 389, 2008 General Session

**59-10-116. Tax on nonresident individual -- Calculation -- Exemption.**

(1) Except as provided in Subsection (2), a tax is imposed on a nonresident individual in an amount equal to the product of the:

- (a) nonresident individual's state taxable income; and
- (b) percentage listed in Subsection 59-10-104(2).

(2) This section does not apply to a nonresident individual exempt from taxation under Section 59-10-104.1.

Amended by Chapter 382, 2008 General Session  
Amended by Chapter 389, 2008 General Session

**59-10-116.1. Exemption for out-of-state employee.**

(1) As used in this section:

- (a) "Declared state disaster or emergency" is as defined in Section 53-2a-1202.
- (b) "Disaster period" is as defined in Section 53-2a-1202.
- (c) "Out-of-state business" is as defined in Section 53-2a-1202.
- (d) "Out-of-state employee" is as defined in Section 53-2a-1202.

(2) An out-of-state employee, including a pass-through entity taxpayer who is an out-of-state employee, is exempt from a tax under this chapter for income earned or passed through:

- (a) from an out-of-state business;
- (b) during a disaster period; and
- (c) as a result of the out-of-state business responding to a declared state disaster or emergency.

Enacted by Chapter 376, 2014 General Session

**59-10-117. State taxable income derived from Utah sources.**

(1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes those items includable in state taxable income attributable to or resulting from:

- (a) the ownership in this state of any interest in real or tangible personal property, including real property or property rights from which gross income from mining as defined by Section 613(c), Internal Revenue Code, is derived;
- (b) the carrying on of a business, trade, profession, or occupation in this state;
- (c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d), or (h) to the extent the addition was previously subtracted from state taxable income;
- (d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c) for a refund described in Subsection 59-10-114(2)(c) to the extent the refund subtracted is related to a tax imposed by this state; or
- (e) an adjustment to adjusted gross income required by Section 59-10-115 to

the extent the adjustment is related to an item described in Subsections (1)(a) through (d).

(2) For the purposes of Subsection (1):

(a) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property shall constitute income derived from Utah sources only to the extent that the income is from property employed in a trade, business, profession, or occupation carried on in this state;

(b) a deduction with respect to a capital loss, net long-term capital gain, or net operating loss shall be based solely on income, gain, loss, and deduction connected with Utah sources, under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner as the corresponding federal deductions;

(c) a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources;

(d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and deduction derived from or connected with Utah sources shall be determined under Section 59-10-118;

(e) a nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, may not be considered to carry on a trade, business, profession, or occupation in this state solely by reason of the purchase or sale of property for the nonresident's own account;

(f) if a trade, business, profession, or occupation is carried on partly within and partly without this state, an item of income, gain, loss, or a deduction derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118;

(g) a nonresident partner's distributive share of partnership income, gain, loss, deduction, or credit derived from or connected with Utah sources shall be determined under Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;

(h) the share of a nonresident estate or trust or a nonresident beneficiary of any estate or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall be determined under Section 59-10-207; and

(i) any dividend, interest, or distributive share of income, gain, or loss from a real estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in the trust, shall be income from intangible personal property under Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the nonresident investor is employing its beneficial interest in the trust in a trade, business, profession, or occupation carried on by the investor in this state.

Amended by Chapter 53, 2011 General Session

**59-10-118. Division of income for tax purposes.**

(1) As used in this section:

(a) "Business income" means income arising from transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible

and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of a taxpayer is directed or managed.

(c) "Nonbusiness income" means all income other than business income.

(d) "Sales" means all gross receipts of a taxpayer not allocated under Subsections (3) through (7).

(e) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any possession of the United States.

(2) A taxpayer having business income that is taxable both within and without this state, shall allocate and apportion the taxpayer's net income as provided in this section.

(3) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in Subsections (4) through (7).

(4) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(5) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property has a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(6) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this

state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(8) All business income shall be apportioned to this state using the same methods, procedures, and requirements of Sections 59-7-311 through 59-7-320.

Amended by Chapter 105, 2008 General Session

Amended by Chapter 389, 2008 General Session

**59-10-119. Returns by husband and wife if husband or wife is a nonresident.**

(1) If the adjusted gross income of a husband and wife who are both nonresidents of this state is reported or determined on separate federal individual income tax returns, the husband's and wife's state taxable incomes in this state shall be separately determined.

(2) If the adjusted gross income of a husband and wife who are both nonresidents of this state is reported or determined on a joint federal individual income tax return, the husband's and wife's tax shall be reported or determined in this state on a joint return.

(3) (a) If one spouse is a nonresident of this state and the other spouse is a resident of this state, separate taxes shall be determined on each spouse's separate state taxable incomes on forms prescribed by the commission.

(b) Notwithstanding Subsection (3)(a), a husband and wife may elect to be considered to be residents of this state for purposes of determining state taxable income for a taxable year.

(c) If one spouse who is a nonresident of this state and the other spouse who is a resident of this state file a joint federal income tax return, but determine state taxable income separately, the spouses shall compute their taxable incomes in this state as if their adjusted gross incomes had been determined separately.

Amended by Chapter 389, 2008 General Session

**59-10-120. Change of status as resident or nonresident.**

(1) If an individual changes the individual's status during the taxable year from resident to nonresident or from nonresident to resident, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require the individual to file one return for the portion of the taxable year during which the individual is a resident and another return for the portion of the taxable year during

which the individual is a nonresident.

(2) The taxable income of the individual described in Subsection (1) shall be determined as provided in this chapter for residents and for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of the individual's resident and nonresident status respectively.

Amended by Chapter 389, 2008 General Session

**59-10-121. Proration when two returns required.**

If an individual is required to file two returns for a taxable year under Section 59-10-120:

(1) personal exemptions and the standard deduction as used on the federal individual income tax return shall be prorated between the two returns, under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to reflect the proportions of the taxable year during which the individual was a resident and a nonresident; and

(2) the total amount of the taxes due on the two returns may not be less than the total amount of the taxes that would be due if the total of the taxable incomes reported on the two returns had been included in one return.

Amended by Chapter 389, 2008 General Session

**59-10-122. Taxable year.**

(1) For purposes of a tax imposed by this chapter, the taxable year of a resident or nonresident individual or resident or nonresident estate or trust shall be the same as the taxable year of the resident or nonresident individual or resident or nonresident estate or trust for federal income tax purposes.

(2) (a) If the taxable year of a resident or nonresident individual or resident or nonresident estate or trust is changed for federal income tax purposes, that taxable year for purposes of a tax imposed by this chapter shall be changed in the same manner as the change for federal income tax purposes.

(b) If a change in a taxable year results in a taxable period of less than 12 months for federal income tax purposes, that same taxable period shall be used in computing a tax imposed by this chapter.

Amended by Chapter 389, 2008 General Session

**59-10-123. Accounting method.**

(1) For purposes of a tax imposed by this chapter, a resident or nonresident individual's or resident or nonresident estate's or trust's method of accounting shall be the same as the method of accounting the resident or nonresident individual or resident or nonresident estate or trust uses for federal income tax purposes.

(2) If a resident or nonresident individual's or resident or nonresident estate's or trust's method of accounting is changed for federal income tax purposes, the resident or nonresident individual's or resident or nonresident estate's or trust's method of

accounting shall be changed in the same manner:

- (a) for purposes of a tax imposed by this chapter; and
- (b) for any taxable year for which the change in the method of accounting is made for federal income tax purposes.

Amended by Chapter 389, 2008 General Session

**59-10-124. Adjustments between taxable years after change in accounting method.**

(1) In computing a resident or nonresident individual's or resident or nonresident estate's or trust's state taxable income for a taxable year under a method of accounting different from the method under which the resident or nonresident individual's or resident or nonresident estate's or trust's state taxable income was computed for the previous taxable year, state taxable income shall be increased or decreased:

(a) to prevent double inclusion or exclusion of an item of gross income as a result of the change in the method of accounting; or

(b) to prevent double allowance or disallowance of a subtraction from or addition to gross income as a result of the change in the method of accounting.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making an increase or decrease required by Subsection (1).

Amended by Chapter 389, 2008 General Session

**59-10-125. Adjustment after change of accounting method.**

(1) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax that results from adjustments determined to be necessary solely by reason of the change may not be greater than if those adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(2) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the taxable year of the change in the method of accounting and for any subsequent taxable year that is attributable to the receipt of installment payments properly accrued in a prior taxable year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 389, 2008 General Session

**59-10-126. Business entities not subject to tax -- Exceptions.**

(1) A business entity that is taxable as a corporation for federal income tax purposes:



- (a) may not be subject to the tax imposed by this chapter; and
- (b) is subject to Chapter 7, Corporate Franchise and Income Taxes.
- (2) A business entity that is exempt from federal income taxation is exempt from the tax imposed by this chapter.
- (3) Notwithstanding Subsection (2), if a business entity that is exempt from federal income taxation has income that is subject to federal income taxation, that income is subject to taxation under Chapter 7, Corporate Franchise and Income Taxes.

Amended by Chapter 389, 2008 General Session

**59-10-136. Domicile -- Temporary absence from state.**

- (1) (a) An individual is considered to have domicile in this state if:
  - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
  - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
  - (i) is the noncustodial parent of a dependent:
    - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
    - (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
  - (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).
- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
  - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
  - (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
  - (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
- (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
  - (i) the individual or the individual's spouse has a permanent home in this state

to which the individual or the individual's spouse intends to return after being absent;  
and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;  
(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

(b) For purposes of this section, an individual is not considered to have a spouse if:

(i) the individual is legally separated or divorced from the spouse; or

(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

(6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

Enacted by Chapter 410, 2011 General Session

#### **59-10-201. Taxation of resident trusts and estates.**

(1) Except as provided in Subsection (2), a tax determined in accordance with the rate prescribed by Subsection 59-10-104(2)(b) is imposed for each taxable year on the state taxable income of each resident estate or trust.

(2) The following are not subject to a tax imposed by this part:

(a) a resident estate or trust that is not required to file a federal income tax return for estates and trusts for the taxable year; or

(b) a resident trust taxed as a corporation.

(3) A resident estate or trust shall be allowed the credit provided in Section 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall be computed by reference to the taxable income of the estate or trust.

(4) The property of the Utah Educational Savings Plan established in Title 53B, Chapter 8a, Utah Educational Savings Plan, and its income from operations and investments are exempt from all taxation by the state under this chapter.

Amended by Chapter 6, 2010 General Session

#### **59-10-201.1. State taxable income of a resident estate or trust defined.**

For a taxable year, the state taxable income of a resident estate or trust means the unadjusted income of the resident estate or trust for that taxable year, as adjusted by Sections 59-10-202, 59-10-209.1, and 59-10-210.

Amended by Chapter 389, 2008 General Session

#### **59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust.**

(1) There shall be added to unadjusted income of a resident or nonresident

estate or trust:

(a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining adjusted gross income;

(b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a political subdivision of a state other than this state; or

(iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through (iii);

(c) any portion of federal taxable income for a taxable year if that federal taxable income is derived from stock:

(i) in an S corporation; and

(ii) that is held by an electing small business trust;

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident estate or trust that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or trust that is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section 53B-8a-102; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident estate or trust:

(I) that is the account owner; and

(II) on the resident or nonresident estate's or trust's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section 59-10-1017; and

(e) any fiduciary adjustments required by Section 59-10-210.

(2) There shall be subtracted from unadjusted income of a resident or nonresident estate or trust:

(a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in

determining federal taxable income;

(b) income of an irrevocable resident trust if:

(i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;

(ii) the trust first became a resident trust on or after January 1, 2004;

(iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;

(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

(v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and

(vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:

(i) during a time period that the Ute tribal member resided on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation;

(d) any amount:

(i) received by a resident or nonresident estate or trust;

(ii) that constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(iii) to the extent that amount is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;

(e) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident estate or trust derived from a deceased resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts;

(f) an amount:

(i) received by a resident or nonresident estate or trust if that amount is derived from a deceased enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax

under this part on that amount in accordance with:

- (A) federal law;
- (B) a treaty; or
- (C) a final decision issued by a court of competent jurisdiction;

(g) the amount that a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for the taxable year; and

- (h) any fiduciary adjustments required by Section 59-10-210.

(3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be added to unadjusted income of a resident or nonresident estate or trust if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

- (i) the entity; or
- (ii) (A) the state in which the entity is located; or
- (B) the District of Columbia, if the entity is located within the District of Columbia.

(4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

(i) the income is derived from a deceased Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(c); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(c);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.

Amended by Chapter 6, 2010 General Session

**59-10-204. State taxable income of a nonresident estate or trust.**

For a taxable year, the state taxable income of a nonresident estate or trust is an amount calculated by:

(1) determining the unadjusted income of the nonresident estate or trust for that taxable year after making the adjustments required by:

(a) Section 59-10-202;

(b) Section 59-10-207;

(c) Section 59-10-209.1; or

(d) Section 59-10-210; and

(2) calculating the portion of the amount determined under Subsection (1) that is derived from Utah sources determined in accordance with the principles of Section 59-10-117.

Amended by Chapter 389, 2008 General Session

**59-10-205. Tax on nonresident estate or trust.**

(1) Except as provided in Subsection (2), a tax is imposed on a nonresident estate or trust in an amount equal to the product of:

(a) the nonresident estate's or trust's state taxable income as determined under Section 59-10-204; and

(b) the percentage listed in Subsection 59-10-104(2).

(2) The following are not subject to a tax imposed by this part:

(a) a nonresident estate or trust that is not required to file a federal income tax return for estates and trusts for the taxable year; or

(b) a nonresident trust taxed as a corporation.

Amended by Chapter 389, 2008 General Session

**59-10-207. Share of a nonresident estate or trust and beneficiaries in state taxable income.**



- (1) The following shall be determined as provided in this section:
- (a) the share of a nonresident estate or trust or a nonresident beneficiary of a nonresident estate or trust in an item of income, gain, loss, or deduction that constitutes distributable net income; and
  - (b) for purposes of Section 59-10-116, the share of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss, or deduction.
- (2) (a) The modifications described in Sections 59-10-202 and 59-10-210 shall be added to or subtracted from the amount of an item of income, gain, loss, or deduction that constitutes distributable net income to the extent the item relates to an item of income, gain, loss, or deduction that also constitutes distributable net income.
- (b) A modification may not be made under this section if the modification duplicates an item already reflected in distributable net income.
- (3) (a) The amount determined under Subsection (2)(a) shall be allocated among the estate or trust and the beneficiaries of the estate or trust, including a resident beneficiary, in proportion to the estate's, trust's, or beneficiary's share of distributable net income.
- (b) An amount allocated in accordance with Subsection (3)(a) has the same character as for federal income tax purposes.
- (4) (a) If an estate or trust does not have distributable net income for the taxable year, the share of each beneficiary in the amount determined under Subsection (2)(a) shall be in proportion to the beneficiary's share of the estate or trust income for that taxable year, under state law or the terms of the governing instrument, that is required to be distributed currently and any other amounts of that income distributed in that taxable year.
- (b) For purposes of this Subsection (4), any balance of net income shall be allocated to the estate or trust.
- (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule establish one or more other methods of determining the shares of a beneficiary and of an estate or trust in:
- (i) income derived from sources in this state; and
  - (ii) modifications related to income, gain, loss, or deduction.
- (b) A fiduciary may elect to use a method allowed by this Subsection (5) only if the allocation of a share under Subsection (3) or (4):
- (i) results in an inequity in the allocation; and
  - (ii) the inequity described in Subsection (5)(b)(i) is substantial:
    - (A) in amount; and
    - (B) in relation to the total amount of the modifications described in Subsection (2)(a).

Amended by Chapter 389, 2008 General Session

**59-10-209.1. Adjustments to unadjusted income.**

- (1) The commission shall allow an adjustment to unadjusted income of a resident or nonresident estate or trust if the resident or nonresident estate or trust would otherwise:

- (a) receive a double tax benefit under this chapter; or
- (b) suffer a double tax detriment under this chapter.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to unadjusted income required by Subsection (1).

Amended by Chapter 382, 2008 General Session  
Amended by Chapter 389, 2008 General Session

**59-10-210. Fiduciary adjustments.**

- (1) A share of the fiduciary adjustments described in Subsection (2) shall be added to or subtracted from unadjusted income:
  - (a) of:
    - (i) a resident or nonresident estate or trust; or
    - (ii) a resident or nonresident beneficiary of a resident or nonresident estate or trust; and
  - (b) as provided in this section.
- (2) For purposes of Subsection (1), the fiduciary adjustments are the following amounts:
  - (a) the additions to and subtractions from unadjusted income of a resident or nonresident estate or trust required by Section 59-10-202; and
  - (b) a tax credit claimed by a resident or nonresident estate or trust as allowed by:
    - (i) Section 59-6-102;
    - (ii) Part 10, Nonrefundable Tax Credit Act;
    - (iii) Part 11, Refundable Tax Credit Act;
    - (iv) Section 59-13-202;
    - (v) Section 63M-1-413; or
    - (vi) Section 63M-1-504.
- (3) (a) The respective shares of an estate or trust and its beneficiaries, including for the purpose of this allocation a nonresident beneficiary, in the state fiduciary adjustments, shall be allocated in proportion to their respective shares of federal distributable net income of the estate or trust.
- (b) If the estate or trust described in Subsection (3)(a) has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustments shall be allocated in proportion to that beneficiary's share of the estate or trust income for the taxable year that is, under state law or the governing instrument, required to be distributed currently plus any other amounts of that income distributed in that taxable year.
- (c) After making the allocations required by Subsections (3)(a) and (b), any balance of the fiduciary adjustments shall be allocated to the estate or trust.
- (4) (a) The commission shall allow a fiduciary to use a method for determining the allocation of the fiduciary adjustments described in Subsection (2) other than the method described in Subsection (3) if using the method described in Subsection (3) results in an inequity:

- (i) in allocating the fiduciary adjustments described in Subsection (2); and
- (ii) if the inequity is substantial:
  - (A) in amount; and
  - (B) in relation to the total amount of the fiduciary adjustments described in Subsection (2).
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules authorizing a fiduciary to use a method for determining the allocation of the fiduciary adjustments described in Subsection (2) other than the method described in Subsection (3) if using the method described in Subsection (3) results in an inequity:
  - (i) in allocating the fiduciary adjustments described in Subsection (2); and
  - (ii) if the inequity is substantial:
    - (A) in amount; and
    - (B) in relation to the total amount of the fiduciary adjustments described in Subsection (2).

Amended by Chapter 382, 2008 General Session  
Amended by Chapter 389, 2008 General Session

**59-10-401. Definitions.**

For purposes of this part:

- (1) "Employee" means and includes every individual performing services for an employer, either within or without, or both within or without the state of Utah, or any individual performing services within the state of Utah, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes offices of corporations, individuals, including elected officials, performing services for the United States Government or any agency or instrumentality thereof, or the state of Utah or any county, city, municipality, or political subdivision thereof.
- (2) "Employer" means a person or organization transacting business in or deriving any income from sources within the state of Utah for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or is the officer, agent, or employee of the person or organization having control of the payment of wages. It includes any officer or department of state or federal government, or any political subdivision or agency of the federal or state government, or any city organized under a charter, or any political body not a subdivision or agency of the state.
- (3) "Wages" means wages as defined in Section 3401 of the Internal Revenue Code.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-402. Requirement of withholding.**

- (1) Each employer making payment of wages shall deduct and withhold from wages an amount to be determined by a commission rule which will, as closely as

possible, pay the income tax imposed by this chapter.

(2) Any such employer who is to do business within the state of Utah for a period not to exceed 60 days in the aggregate during any calendar year may be relieved from the requirement provided for under this part for such period by furnishing to the commission in advance a certificate so certifying. If that employer thereafter does business within the state of Utah for a period in excess of 60 days, that employer shall be liable for all the tax which otherwise he would have been required to deduct and withhold. Upon a showing of good cause by the employer the commission may extend for a period of not to exceed 30 days the time during which the employer is not required to deduct and withhold the tax.

(3) The amount withheld under this section shall be allowed to the recipient of the income as a credit against the tax imposed by this chapter. The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

Amended by Chapter 96, 1987 General Session

**59-10-403. Circumstances under which an employer is not required to deduct and withhold a tax.**

(1) Notwithstanding any other provision of this chapter, an employer is not required to deduct and withhold any tax under this chapter upon a payment of wages to an employee:

(a) if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee, certifying that the employee:

(i) incurred no liability for a tax imposed under this chapter for the employee's immediately preceding taxable year; and

(ii) expects that the employee will not incur liability for a tax imposed under this chapter for the employee's current taxable year; or

(b) if the employer:

(i) is an out-of-state business as defined in Section 53-2a-1202; and

(ii) pays the wages as compensation for services performed in response to a declared state disaster or emergency as defined in Section 53-2a-1202.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall provide for the coordination of this section with Section 59-10-402.

Amended by Chapter 376, 2014 General Session

**59-10-404. Extension of withholding to payments other than wages.**

(1) For purposes of this part, any supplemental unemployment compensation benefit paid to an individual, and any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this part is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) For purposes of Subsection (1), "supplemental unemployment compensation benefits" means amounts that are paid to an employee pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment, whether or not such separation is temporary, resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includable in the employee's gross income.

(3) For purposes of this part, any unemployment compensation benefit paid to an individual pursuant to Title 35A, Chapter 4, Employment Security Act, may be subject to withholding as provided in Section 35A-4-407.

(4) For purposes of this section, "annuity" means any amount paid to an individual as a pension or annuity, but only to the extent that the amount is includable in the gross income of such individual.

(5) A request that an annuity be subject to withholding under this part shall be made by the payee in writing to the person making the annuity payments. The request may be terminated by furnishing to the person making the payments a written statement of termination which shall be treated as a withholding exemption certificate for purposes of Section 59-10-403.

Amended by Chapter 375, 1997 General Session

**59-10-405. Voluntary withholding agreements.**

(1) The commission may by rule provide for withholding:

- (a) from remuneration for services performed by an employee for the employee's employer that, without regard to this section, does not constitute wages; or
- (b) from any other type of payment with respect to which the commission finds that withholding would be appropriate under this part if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to the withholding.

(2) The agreement provided for in Subsection (1)(b) shall be made in a form and manner as the commission may by rule prescribe.

(3) For purposes of this part, remuneration or other payments with respect to which an agreement provided for in Subsection (1), other than election made pursuant to Section 35A-4-407, is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

Amended by Chapter 21, 1999 General Session

**59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.**

(1) As used in this section:

- (a) "applicant" means a person that:
  - (i) is required by this section to obtain a license; and
  - (ii) submits an application:

- (A) to the commission; and
- (B) for a license under this section;
- (b) "application" means an application for a license under this section;
- (c) "fiduciary of the applicant" means a person that:
  - (i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and
  - (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
  - (B) is a director of the applicant described in Subsection (1)(c)(i);
  - (C) is an employee of the applicant described in Subsection (1)(c)(i);
  - (D) is a partner of the applicant described in Subsection (1)(c)(i);
  - (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
  - (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (d) "fiduciary of the licensee" means a person that:
  - (i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and
  - (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
  - (B) is a director of the licensee described in Subsection (1)(d)(i);
  - (C) is an employee of the licensee described in Subsection (1)(d)(i);
  - (D) is a partner of the licensee described in Subsection (1)(d)(i);
  - (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
  - (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (e) "license" means a license under this section; and
- (f) "licensee" means a person that is licensed under this section by the commission.

(2) The following persons are guilty of a criminal violation as provided in Section 59-1-401:

- (a) a person that:
  - (i) is required to withhold, report, or remit any amounts under this part; and
  - (ii) engages in business within the state before obtaining a license under this section; or
- (b) a person that:
  - (i) pays wages under this part; and
  - (ii) engages in business within the state before obtaining a license under this section.
- (3) The license described in Subsection (2):
  - (a) shall be granted and issued:
    - (i) by the commission in accordance with this section;
    - (ii) without a license fee; and
    - (iii) if:

(A) an applicant:  
(I) states the applicant's name and address in the application; and  
(II) provides other information in the application that the commission may require; and  
(B) the person meets the requirements of this section to be granted a license as determined by the commission;  
(b) may not be assigned to another person; and  
(c) is valid:  
(i) only for the person named on the license; and  
(ii) until:  
(A) the person described in Subsection (3)(c)(i):  
(I) ceases to do business; or  
(II) changes that person's business address; or  
(B) the commission revokes the license.  
(4) The commission shall review an application and determine whether:  
(a) the applicant meets the requirements of this section to be issued a license;  
and  
(b) a bond is required to be posted with the commission in accordance with Subsections (5) and (6) before the applicant may be issued a license.  
(5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:  
(i) a license under this section was revoked for a delinquency under this part for:  
(A) the applicant;  
(B) a fiduciary of the applicant; or  
(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or  
(ii) there is a delinquency in withholding, reporting, or remitting any amount under this part for:  
(A) an applicant;  
(B) a fiduciary of the applicant; or  
(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part.  
(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:  
(i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); or  
(ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.  
(6) (a) A bond required by Subsection (5) shall be:  
(i) executed by:  
(A) for an applicant, the applicant as principal, with a corporate surety; or  
(B) for a licensee, the licensee as principal, with a corporate surety; and  
(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

- (A) the withholding or remitting of any amount under this part;
- (B) the payment of any:
  - (I) penalty as provided in Section 59-1-401; or
  - (II) interest as provided in Section 59-1-402; or
- (C) any other obligation of the:
  - (I) applicant under this part; or
  - (II) licensee under this part.
- (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount of a bond required by Subsection (5) on the basis of:
  - (i) commission estimates of:
    - (A) for an applicant, any amounts the applicant withholds, reports, or remits under this part; or
    - (B) for a licensee, any amounts the licensee withholds, reports, or remits under this part; and
  - (ii) any amount of a delinquency described in Subsection (6)(c).
- (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
  - (i) for an applicant, the amount of the delinquency is the sum of:
    - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
      - (I) the applicant;
      - (II) a fiduciary of the applicant; or
      - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
    - (B) the amount that any of the following owe under this part:
      - (I) the applicant;
      - (II) a fiduciary of the applicant; and
      - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
  - (ii) for a licensee, the amount of the delinquency is the sum of:
    - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
      - (I) the licensee;
      - (II) a fiduciary of the licensee; or
      - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or
    - (B) the amount that any of the following owe under this part:
      - (I) the licensee;
      - (II) a fiduciary of the licensee; and
      - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.
- (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may not:
  - (i) be less than \$25,000; or
  - (ii) exceed \$500,000.



- (7) (a) The commission shall revoke a license under this section if:
- (i) a licensee violates any provision of this part; and
  - (ii) before the commission revokes the license the commission provides the licensee:
    - (A) reasonable notice; and
    - (B) a hearing.
  - (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:
    - (i) paying any:
      - (A) amounts due under this part;
      - (B) penalty as provided in Section 59-1-401; or
      - (C) interest as provided in Section 59-1-402; and
    - (ii) posting a bond in accordance with Subsections (5) and (6).

Amended by Chapter 382, 2008 General Session

**59-10-406. Collection and payment of tax.**

(1) (a) Each employer shall, on or before the last day of April, July, October, and January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.

(b) The commission may change the time or period for making reports and payments if:

- (i) in its opinion, the tax is in jeopardy; or
- (ii) a different time or period will facilitate the collection and payment of the tax by the employer.

(2) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:

- (a) the total amount of wages paid to his employees;
- (b) the amount of federal income tax deducted and withheld;
- (c) the amount of tax under this part deducted and withheld; and
- (d) any other information the commission may require.

(3) (a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:

- (i) the total compensation paid;
- (ii) the federal income tax deducted and withheld; and
- (iii) the state tax deducted and withheld for each employee during the calendar year.

(b) (i) Except as provided in Subsection (3)(b)(ii), the return required by Subsection (3)(a) shall be filed with the commission on or before February 28 of the year following that for which the report is made.

(ii) An annual return described in Subsection (3)(a) that is filed electronically shall be filed with the commission on or before the date established in Section 6071(b), Internal Revenue Code, for filing returns.

(4) (a) Each employer shall also, in accordance with rules prescribed by the

commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.

(b) The statement shall be made available to each employee described in Subsection (4)(a) on or before January 31 of the year following that for which the report is made.

(5) (a) The employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part.

(b) If an employer pays the tax required to be deducted and withheld under this part:

(i) an employee of the employer is not liable for the amount of any payment described in Subsection (5)(a); and

(ii) the employer is not liable to any person or to any employee for the amount of any such payment described in Subsection (5)(a).

(c) For the purpose of making penal provisions of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this part is considered to be the tax of the employer and with respect to such amounts the employer is considered to be the taxpayer.

(6) (a) Each employer that deducts and withholds any amount under this part shall hold the amount in trust for the state for the payment of the amount to the commission in the manner and at the time provided for in this part.

(b) So long as any delinquency continues, the state shall have a lien to secure the payment of any amounts withheld, and not remitted as provided under this section, upon all of the assets of the employer and all property owned or used by the employer in the conduct of the employer's business, including stock-in-trade, business fixtures, and equipment.

(c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind, including existing liens for taxes.

(7) To the extent consistent with this section, the commission may use all the provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

(8) For all taxable years beginning on or after January 1, 2001, an employer that is required to file a federal Form W-2 in an electronic format with the Federal Department of the Treasury Internal Revenue Service shall file each Form W-2 that is required to be filed with the commission in an electronic format approved by the commission.

Amended by Chapter 10, 2006 General Session

**59-10-407. Withholding tax prepayments.**

(1) This section does not apply to an employer filing a withholding tax return for a period under this part other than a quarterly period.

(2) (a) Any employer whose withholding tax liability under Section 59-10-402 is

estimated to average an amount designated by the commission by rule shall make a monthly prepayment of the amount required to be paid by Section 59-10-406 for each monthly period of each quarterly period.

(b) An employer that makes a monthly prepayment described in this Subsection (2) shall make the monthly prepayment as provided in this section until the commission notifies the employer in writing.

(c) (i) An employer shall file a form with a monthly prepayment.

(ii) The commission shall prescribe and furnish the form described in Subsection (2)(c)(i).

(iii) An employer shall make a monthly prepayment and file the form described in Subsection (2)(c)(i) on or before the last day of the month after the end of each monthly period of each quarterly period.

(3) In determining whether an employer's estimated withholding tax liability will average an amount that requires a monthly prepayment, the commission may consider:

(a) a return filed pursuant to Section 59-10-406; or

(b) information in the commission's possession or that may come into the commission's possession.

(4) The penalties and interest for failure to make a monthly prepayment and file the form described in Subsection (2)(c)(i) by the due date described in Subsection (2)(c)(iii) are the same as the penalties and interest under Sections 59-1-401 and 59-1-402 relating to payment of a tax, fee, or charge or filing a return.

Amended by Chapter 33, 2009 General Session

**59-10-408. Withholding rules -- Agreements with federal government.**

The commission may prescribe and enforce reasonable rules necessary to carry out the provisions of Sections 59-10-401 through 59-10-407, and to make such agreements with the United States Government as it deems necessary or advisable to provide for deduction and withholding of tax from wages of federal employees in the state of Utah.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-501. Rulemaking authority -- Federal income tax return information.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to allow a taxpayer to submit specified excerpts from the taxpayer's federal income tax return rather than submitting a copy of the taxpayer's entire federal income tax return.

Amended by Chapter 212, 2009 General Session

**59-10-502. Persons required to file returns.**

An income tax return with respect to the tax imposed by this chapter shall be filed by:

(1) every resident individual, estate, or trust required to file a federal income tax

return for the taxable year; and

(2) every nonresident individual, estate, or trust having federal gross income derived from sources within the state for the taxable year and required to file a federal income tax return for such taxable year.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-503. Returns by husband and wife.**

(1) A husband and wife may make a single return jointly with respect to the tax imposed by this chapter even though one of the spouses has neither gross income nor deductions, except as follows:

(a) No joint return shall be made if the husband and wife are not permitted to file a joint return for federal income tax purposes.

(b) If the federal income tax liability of husband or wife is determined on a separate return for federal income tax purposes, the income tax liability of each spouse shall be determined on a separate return under this chapter.

(c) If the federal income tax liabilities of husband and wife, other than a husband and wife described in Subsection (1)(b), are determined on a joint federal return, they shall file a joint return under this chapter and their tax liability shall be joint and several.

(d) If neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this chapter, they may elect to file separate or joint returns and their tax liability shall be several or joint and several, in accordance with the election made.

(2) If either husband or wife is a resident and the other is a nonresident, they shall file separate income tax returns in this state on such forms as may be required by the commission, in which event their tax liability shall be several. They may elect to determine their joint taxable income as if both were residents, in which event their tax liability shall be joint and several.

Amended by Chapter 324, 2010 General Session

**59-10-504. Returns made by fiduciaries and receivers.**

Any fiduciary or receiver required to make a return for federal income tax purposes under the provisions of Section 6012(b) of the Internal Revenue Code shall make and file the corresponding state return for state income tax purposes.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-505. Return by minor.**

(1) As used in this section, "parent" includes an individual who is entitled to the services of an individual who is a minor by reason of having parental rights and duties with respect to the individual who is a minor.

(2) If an individual who is a minor is required to make a return under this chapter, the return shall include:

(a) all income attributable to the individual's personal services; and

- (b) all other items of the individual's income.
- (3) The income of an individual who is a minor may not be included on the return of the individual's parent.
- (4) An expenditure attributable to the income of an individual who is a minor that is made by the individual or the individual's parent is considered to have been paid or incurred by the individual who is a minor.
- (5) A tax assessed against an individual who is a minor, to the extent attributable to income from personal services, if not paid by the individual, for all purposes is considered as being properly assessable against the individual's parent.

Amended by Chapter 212, 2009 General Session

**59-10-507. Return by a pass-through entity.**

- (1) As used in this section:
  - (a) "Pass-through entity" is as defined in Section 59-10-1402.
  - (b) "Taxable year" means a year or other time period that would be a taxable year of a pass-through entity if the pass-through entity were subject to taxation under this chapter.
- (2) A pass-through entity having any income derived from or connected with Utah sources shall make a return for the taxable year as prescribed by the commission.

Amended by Chapter 312, 2009 General Session

**59-10-508. Returns with respect to common trust funds.**

Every bank or trust company maintaining a common trust fund shall make a return to the commission for each tax year in substantially the same form as it is required to make to the federal government.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-509. Notice of qualification as fiduciary.**

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give the commission such notice of qualification in such capacity as the commission may by rule require.

Amended by Chapter 4, 1993 General Session

**59-10-510. Return of electing small business corporation.**

An electing small business corporation, as defined in Section 1371(a)(2), Internal Revenue Code, shall make a return for each taxable year, stating specifically:

- (1) the items of the electing small business corporation's gross income and the deductions allowable by Subtitle A, Internal Revenue Code;
- (2) the names and addresses of all persons owning stock in the electing small business corporation at any time during the taxable year;
- (3) the number of shares of stock owned by each shareholder at all times during

the taxable year to each shareholder;

(4) the date of each distribution to a shareholder; and

(5) other information as the commission may prescribe by:

(a) form; or

(b) administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 212, 2009 General Session

**59-10-511. Statement of tax withheld.**

For requirement that an employer furnish an employee a statement of tax withheld, see Section 59-10-406.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-512. Signing of returns and other documents.**

(1) Except as otherwise provided by Subsection (2), any return, statement, or other document required to be made under any provision of this chapter shall be signed in accordance with forms or rules prescribed by the commission.

(2) The return of a partnership made under Section 59-10-507 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(3) The fact that an individual's name is signed on a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

Amended by Chapter 4, 1993 General Session

**59-10-513. Verifications of returns.**

Except as the commission shall otherwise provide by rule, any return, declaration, statement, or other document required to be made under any provision of this chapter, or under rules promulgated hereunder, shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-514. Return filing requirements -- Rulemaking authority.**

(1) Subject to Subsection (3):

(a) an individual income tax return filed for a tax imposed in accordance with Part 1, Determination and Reporting of Tax Liability and Information, shall be filed with the commission:

(i) except as provided in Subsection (1)(a)(ii), on or before the 15th day of the fourth month following the last day of the taxpayer's taxable year; or

(ii) on or before the day on which a federal individual income tax return is due

under the Internal Revenue Code if the Internal Revenue Code provides a due date for filing that federal individual income tax return that is different from the due date described in Subsection (1)(a)(i);

(b) a fiduciary income tax return filed for a tax imposed in accordance with Part 2, Trusts and Estates, shall be filed with the commission:

(i) except as provided in Subsection (1)(b)(ii), on or before the 15th day of the fourth month following the last day of the taxpayer's taxable year; or

(ii) on or before the day on which a federal tax return for estates and trusts is due under the Internal Revenue Code if the Internal Revenue Code provides a due date for filing that federal tax return for estates and trusts that is different from the due date described in Subsection (1)(b)(i); or

(c) a return filed in accordance with Section 59-10-507, shall be filed with the commission:

(i) except as provided in Subsection (1)(c)(ii), in accordance with Section 59-10-507; or

(ii) on or before the day on which a federal return of partnership income is due under the Internal Revenue Code if the Internal Revenue Code provides a due date for filing that federal return of partnership income that is different from the due date described in Subsection (1)(c)(i).

(2) A person required to make and file a return under this chapter shall, without assessment, notice, or demand, pay any tax due:

(a) to the commission; and

(b) before the due date for filing the return determined without regard to any extension of time for filing the return.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing what constitutes filing a return with the commission.

Amended by Chapter 382, 2008 General Session

**59-10-514.1. Definitions -- Requirement to file returns by electronic means -- Exceptions -- Waiver.**

(1) As used in this section:

(a) "Electronic" is as defined in Section 59-12-102.

(b) (i) Except as provided in Subsection (1)(b)(ii), "income tax return preparer" means an individual that prepares for compensation a return required to be filed by this chapter.

(ii) "Income tax return preparer" does not include an individual who:

(A) performs only one or more of the following relating to a return required to be filed by this chapter:

(I) types the return;

(II) reproduces the return; or

(III) performs an action similar to Subsection (1)(b)(ii)(A)(I) or (II) as determined by the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(B) prepares a return required to be filed by this chapter:  
(I) of the individual's employer or an officer or employee of the employer if the individual is regularly and continuously employed by that employer;

(II) of any person if that individual is a fiduciary for that person; or

(III) for a taxpayer in response to a tax order issued to that taxpayer.

(c) "Prepare" means to prepare a substantial portion or more of a return required to be filed by this chapter.

(d) (i) Except as provided in Subsection (1)(d)(ii), "qualifying return" means a return required to be filed by this chapter for any taxable year that begins on or after the January 1 described in Subsection (2)(c)(i).

(ii) "Qualifying return" does not include:

(A) an amended return; or

(B) (I) a return filed for any taxable year that begins before the first day of the current taxable year; and

(II) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "current taxable year".

(2) (a) Subject to Subsections (2)(b) and (c) and except as provided in Subsection (3), an income tax return preparer shall file all qualifying returns by electronic means if the income tax return preparer prepares in any calendar year beginning on or after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.

(b) (i) For purposes of Subsection (2)(a), if two or more income tax return preparers are affiliated with the same establishment, the total number of returns required to be filed by this chapter that are prepared in a calendar year beginning on or after January 1, 2005, by all of the income tax return preparers that are affiliated with that establishment shall be included in determining whether an income tax return preparer prepares in a calendar year beginning on or after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.

(ii) For purposes of Subsection (2)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule determine the circumstances under which two or more income tax return preparers are affiliated with the same establishment.

(c) If an income tax return preparer is required by this Subsection (2) to file all qualifying returns by electronic means, the income tax return preparer shall file those qualifying returns by electronic means:

(i) beginning on January 1 of the first calendar year immediately following the day on which the income tax return preparer meets the requirements of this Subsection (2); and

(ii) for all calendar years after the calendar year described in Subsection (2)(c)(i).

(3) An income tax return preparer is not required to file a qualifying return by electronic means if:

(a) a schedule required to be attached to the qualifying return cannot be filed by electronic means;

(b) the taxpayer for which the qualifying return is prepared requests in writing



that the income tax return preparer not file the qualifying return by electronic means; or  
(c) subject to Subsection (4), the commission waives for one or more qualifying returns filed by the income tax return preparer the requirement imposed by this section to file the qualifying returns by electronic means.

(4) (a) For purposes of Subsection (3)(c), the commission may waive for one or more qualifying returns filed by an income tax return preparer the requirement imposed by this section to file the qualifying returns by electronic means if the income tax return preparer demonstrates to the commission that it would be an undue hardship to file the qualifying returns by electronic means.

(b) For purposes of Subsection (4)(a) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define the circumstances that constitute an undue hardship to file a qualifying return by electronic means.

Amended by Chapter 201, 2010 General Session

**59-10-515. Place and time for filing other documents.**

The commission by rule shall fix the place and time for filing other documents.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-516. Filing extension -- Payment of tax -- Penalty -- Foreign residency.**

(1) (a) The commission shall allow a taxpayer an extension of time for filing a return.

(b) (i) For a return filed by a taxpayer except for a partnership, the extension under Subsection (1)(a) may not exceed six months.

(ii) For a return filed by a partnership, the extension under Subsection (1)(a) may not exceed five months.

(2) (a) Except as provided in Subsection (2)(b), the commission may not impose on a taxpayer during the extension period prescribed under Subsection (1) a penalty under Section 59-1-401 if the taxpayer pays, on or before the 15th day of the fourth month following the close of the taxpayer's taxable year, the lesser of:

(i) 90% of the total tax reported on the return for the current taxable year; or

(ii) 100% of the total tax liability for the taxable year immediately preceding the current taxable year.

(b) If a taxpayer fails to meet the requirements of Subsection (2)(a), the commission may apply to the total balance due a penalty as provided in Section 59-1-401.

(3) If a federal income tax return filing is lawfully delayed pending a determination of qualification for a federal tax exemption due to residency outside of the United States, a taxpayer shall file a return within 30 days after that determination is made.

Amended by Chapter 271, 2010 General Session

**59-10-517. Timely mailing treated as timely filing and paying.**

(1) (a) If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(b) Subsection (1)(a) shall apply only if:

(i) the postmark date falls within the prescribed period or on or before the prescribed date:

(A) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document; or

(B) for making the payment (including any extension granted for making such payment); and

(ii) the return, claim, statement, or other document, or payment, was, within the time prescribed in Subsection (1)(b)(i), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

(2) This section shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by rules prescribed by the commission.

(3) (a) For purposes of this section, if any such return, claim, statement, or other document, or payment, is sent by United States registered mail:

(i) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed; and

(ii) the date of registration shall be deemed the postmark date.

(b) The commission may provide by rule the extent to which the provisions of Subsection (3)(a) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(4) This section does not apply with respect to currency or other medium of payment unless actually received and accounted for.

(5) (a) If any deposit required to be made on or before a prescribed date is, after such date, delivered by the United States mail to the commission, such deposit shall be deemed received by the commission on the date the deposit was mailed.

(b) Subsection (5)(a) applies only if the person required to make the deposit establishes that:

(i) the date of mailing falls on or before the second day before the prescribed date for making the deposit (including any extension of time granted for making the deposit); and

(ii) the deposit was, on or before such second day, mailed in the United States

in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the commission.

Amended by Chapter 324, 2010 General Session

**59-10-518. Time for performance of acts when last day falls on Saturday, Sunday, or legal holiday.**

(1) As used in this section, "legal holiday" means a legal holiday in this state.

(2) Subject to Section 59-10-514, if the last day prescribed under authority of this chapter for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered to be timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

(3) For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time.

Amended by Chapter 28, 2007 General Session

**59-10-519. Place for filing returns or other documents.**

When not otherwise provided for by this chapter, the commission shall by rule prescribe the place for the filing of any return, statement, or other documents, or copies thereof, required by this chapter or rules.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-520. Time and place for paying tax shown on returns.**

(1) When a return of tax is required under this chapter or rules, the person required to make such return shall, without assessment or notice and demand from the commission, pay such tax to the commission office with which the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time).

(2) In any case where a tax is required to be paid on or before a certain date, or within a certain period, any reference in this chapter to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-522. Extension of time for paying tax.**

(1) The commission, except as otherwise provided by this chapter, may extend the time for payment of the amount shown, or required to be shown, on any return required under authority of this chapter (or any installment thereof), for a reasonable period not to exceed six months from the date fixed for payment thereof. Such extension may exceed six months in the cases of taxpayers who are outside the states of the union and the District of Columbia.

(2) Under rules prescribed by the commission, the time for payment of the

amount determined as a deficiency may be extended for a period not to exceed 18 months from the date fixed for payment of the deficiency, and, in exceptional cases, for a further period not to exceed 12 months. An extension under this subsection may be granted only where it is shown to the satisfaction of the commission that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer. No extension may be granted if the deficiency is due to negligence, to intentional disregard of rules, or to fraud with intent to evade tax.

(3) Extensions of time for payment of any portion of a claim for tax under this chapter, allowed in bankruptcy or receivership proceedings, which is unpaid, may be had in the same manner and subject to the same provisions and limitations as provided in Subsection (2) in respect of a deficiency in tax.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-527. Assessment authority.**

(1) The commission shall make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this chapter or former chapters imposing income taxes.

(2) The assessment shall be made by recording the liability of the taxpayer in the office of the commission in accordance with rules prescribed by the commission. The commission may, at any time within the period prescribed for assessment, make a supplemental assessment if it is ascertained that any assessment is imperfect or incomplete in any material respect.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-529. Overpayment of tax -- Credits -- Refunds.**

(1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

(a) against an income tax due from a taxpayer;

(b) against:

(i) the amount of a judgment against a taxpayer, including a final judgment or order requiring payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims Restitution Act, obtained through due process of law by an entity of state or local government; or

(ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as determined by the Office of Recovery Services in the Department of Human Services and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection (2); or

(c) subject to Subsection (3), (5), (6), or (7), as bail, to ensure the appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment.

(2) If a balance remains after an overpayment is credited in accordance with Subsection (1), the balance shall be refunded to the taxpayer.

(3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:  
(a) that is due and related to a warrant that is outstanding on or after February 16, 1984; and

(b) in accordance with Subsections (5) and (6).

(4) (a) The amount of an overpayment may be credited against an obligation described in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

(i) the amount of child support that is due or past due as of the date of the notice or other specified date;

(ii) that any overpayment shall be applied to reduce the amount of due or past-due child support specified in the notice; and

(iii) that the taxpayer may contest the amount of past-due child support specified in the notice by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Office of Recovery Services shall establish rules to implement this Subsection (4), including procedures, in accordance with the other provisions of this section, to ensure:

(i) prompt reimbursement to a taxpayer of any amount of an overpayment that was credited against a child support obligation in error; and

(ii) prompt distribution of properly credited funds to the obligee parent.

(5) The amount of an overpayment may be credited against bail described in Subsection (1)(c) if:

(a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail, appear, or otherwise satisfy the terms of a citation, summons, or court order; and

(b) a notice of intent to apply the overpayment as bail on the issued warrant has been sent to the taxpayer's current address on file with the commission.

(6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that issued the warrant of arrest.

(ii) The clerk of the court is authorized to endorse the check or commission warrant of payment on behalf of the payees and deposit the money in the court treasury.

(b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the warrant for arrest of the taxpayer if:

(A) the case is a case for which a personal appearance of the taxpayer is not required; and

(B) the dollar amount of the overpayment represents the full dollar amount of bail.

(ii) In a case except for a case described in Subsection (6)(b)(i):

(A) the court receiving the overpayment applied as bail is not required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

(B) the taxpayer may be arrested on the warrant.

(c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to resolve the warrant within 40 days after the notice is sent under Subsection (5)(b),

the overpayment applied as bail is forfeited.

(ii) A court may issue another warrant or allow the original warrant to remain in force if:

(A) the taxpayer has not complied with an order of the court;

(B) the taxpayer has failed to appear and respond to a criminal charge for which a personal appearance is required; or

(C) the taxpayer has paid partial but not full bail in a case for which a personal appearance is not required.

(d) If the alleged violations named in a warrant are later resolved in favor of the taxpayer, the bail amount shall be remitted to the taxpayer.

(7) The fine and bail forfeiture provisions of this section apply to all warrants, fines, fees, and surcharges issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction described in this section, which are outstanding on or after February 16, 1984.

(8) If the amount allowable as a credit for tax withheld from a taxpayer exceeds the tax to which the credit relates, the excess is considered an overpayment.

(9) (a) Subject to Subsection (9)(b), a claim for credit or refund of an overpayment that is attributable to a net operating loss carry back or carry forward shall be filed within three years from the due date of the return for the taxable year of the net operating loss.

(b) The three-year period described in Subsection (9)(a) shall be extended by any extension of time provided in statute for filing the return described in Subsection (9)(a).

(10) If there is no tax liability for a period in which an amount is paid under this chapter, the amount is an overpayment.

(11) If a tax under this chapter is assessed or collected after the expiration of the applicable period of limitation, that amount is an overpayment.

(12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within two years from the date a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:

(i) report a change or correction in income reported on the taxpayer's federal income tax return;

(ii) report a change or correction that is treated in the same manner as if the change or correction were an overpayment for federal income tax purposes; or

(iii) file an amended return with the commission.

(b) If a report or amended return is not filed within 90 days, interest on any resulting refund or credit ceases to accrue after the 90-day period.

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.

(d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the amount or the time within which a claim for credit or refund may be filed.

(13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

(14) In the case of an overpayment of tax by an employer under Part 4,

Withholding of Tax, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment is not deducted and withheld from wages under this chapter.

(15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission may make payment to the personal representative of the taxpayer's estate.

(b) If there is no personal representative of the taxpayer's estate, payment may be made to those persons who establish entitlement to inherit the property of the decedent in the proportions established in Title 75, Utah Uniform Probate Code.

(16) If an overpayment relates to a change in net income described in Subsection 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

(17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

Amended by Chapter 74, 2013 General Session

**59-10-531. Claims for refund or credit.**

A taxpayer that claims to be allowed a refund or credit under Section 59-10-529 may file a claim for the refund or credit with the commission within the time provided in Section 59-10-529.

Amended by Chapter 212, 2009 General Session

**59-10-536. Assessment and collection of tax -- Change on federal income tax return -- Taxpayer requirement to make certain filings with the commission.**

(1) (a) If, before the expiration of the time prescribed in this section for the assessment of a tax, the commission and the taxpayer agree in writing to the assessment of the tax in a time period after the time period prescribed in this section for the assessment of a tax, the tax may be assessed at any time before the expiration of the period to which the commission and the taxpayer agree.

(b) A time period that the commission and a taxpayer agree upon under Subsection (1)(a) may be extended by written agreement:

(i) between the commission and the taxpayer; and

(ii) made before the expiration of the time period that the commission and the taxpayer previously agreed upon.

(2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because of an action by the federal government, the taxpayer shall file with the commission within 90 days after the date there is a final determination of the action:

(A) a copy of the taxpayer's amended federal income tax return; and

(B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.

(ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because the taxpayer files an amended federal income tax return, the taxpayer shall file with the commission

within 90 days after the date the taxpayer files the amended federal income tax return:

(A) a copy of the taxpayer's amended federal income tax return; and

(B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.

(iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if a change in the taxpayer's federal income tax return does not increase state tax liability.

(b) (i) Subject to Subsection (2)(b)(iii), the commission may assess a deficiency in state income taxes within three years after a notification or amended federal income tax return described in Subsection (2)(a) is filed.

(ii) The amount of an assessment of tax under this Subsection (2)(b) may not exceed the amount of the increase in Utah tax attributable to the change described in Subsection (2)(a).

(iii) If a taxpayer fails to report to the commission a change specified in this Subsection (2)(b), the assessment may be made at any time within six years after the date of the change.

(3) If a deficiency in federal income tax required to be reported is attributable to a net operating loss carry back or carry forward, a deficiency in the tax imposed by this chapter may be assessed within three years from the due date of the return for the taxable year of the net operating loss.

(4) Except as provided in Subsections (1) through (3), this section does not affect the time within which or the amount for which an assessment may otherwise be made.

(5) (a) An erroneous refund shall be considered an underpayment of tax on the date the commission makes the erroneous refund.

(b) An assessment of a deficiency arising out of an erroneous refund may be made at any time within three years from the date the refund is made, except that an assessment may be made within five years from the time the refund is made if any part of the refund is induced by fraud or misrepresentation of a material fact.

(6) (a) Subject to Subsection (6)(b), if a return is required for a decedent or for the decedent's estate during the period of administration, the tax shall be assessed within 18 months after written request for the assessment:

(i) made after the return is filed; and

(ii) by:

(A) the personal representative; or

(B) another person representing the estate of the decedent.

(b) Except as otherwise provided in this section, the assessment described in Subsection (6)(a) may not be made more than three years after the time the return is filed.

(7) (a) The amount of a tax imposed by this chapter may be assessed at any time within six years after the time the return is filed if:

(i) a resident individual, resident estate, or resident trust omits from gross income as reported for federal income tax purposes an amount properly includable in adjusted gross income, which is in excess of 25% of the amount of gross income stated in the return; or



(ii) a nonresident individual, nonresident estate, or nonresident trust omits from gross income as reported for federal income tax purposes an amount of adjusted gross income derived from Utah sources determined in accordance with Section 59-10-117, properly includable in adjusted gross income, that is in excess of 25% of the amount of adjusted gross income derived from Utah sources which is reflected in the return.

(b) For purposes of Subsection (7)(a)(ii), there may not be taken into account any amount that is omitted in the return if the amount is disclosed:

(i) (A) in the return; or

(B) in a statement attached to the return; and

(ii) in a manner adequate to apprise the commission of the nature and amount of the item.

Amended by Chapter 53, 2011 General Session

**59-10-537. Interest on underpayment, nonpayment, or extension of time for payment of tax.**

(1) (a) Subject to the other provisions of this section, if any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on the amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid.

(b) Interest under this Subsection (1) may not be paid if the amount of the interest is less than \$1.

(c) If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(2) If a deficiency or any interest or additional amount assessed in connection with an amount under Subsection (1), or a penalty in case of a delinquency provided for in Section 59-10-539 is not paid in full within 10 days from the date of notice and demand from the commission, there shall be collected as part of the tax, interest at the rate and in the manner prescribed in Section 59-1-402 from the date of the notice and demand until the entire amount of the deficiency, interest, and additional amount is paid.

(3) If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Section 59-10-522, interest shall be collected as a part of the amount at the rate and in the manner prescribed in Section 59-1-402.

Amended by Chapter 212, 2009 General Session

**59-10-538. Interest on overpayments.**

(1) Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this chapter, at the rate and in the manner prescribed in Section 59-1-402.

(2) For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year of the net

operating loss which results in such carryback.

Amended by Chapter 1, 1993 Special Session 2

**59-10-539. Penalties and interest.**

(1) (a) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed for paying the tax, including extensions, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return a penalty as provided in Section 59-1-401.

(b) For purposes of Subsection (1)(a), the amount of tax required to be shown on a return shall be reduced by:

(i) the amount of any part of the tax that is paid on or before the date prescribed for payment of the tax; and

(ii) the amount of any credit against the tax that may be claimed upon the return.

(2) If any part of any deficiency in a tax imposed by this chapter is due to negligence or intentional disregard of rules, but without intent to defraud, a penalty shall be assessed, collected, and paid as provided in Section 59-1-401 in the same manner as if the deficiency were an underpayment.

(3) (a) If any part of a deficiency in a tax imposed by this chapter is due to fraud, there shall be added to the tax a penalty as provided in Section 59-1-401.

(b) The amount described in Subsection (3)(a) shall be in lieu of any other penalty imposed by Subsection (1) or (2).

(4) (a) If any employer, without intent to evade or defeat any tax imposed by this chapter or the payment of any tax imposed by this chapter, fails to make a return and pay a tax withheld by the employer at the time required under Section 59-10-402, the employer shall be liable for the tax and shall pay the tax together with interest at the rate and in the manner prescribed in Section 59-1-402.

(b) The penalty provided in Subsection (1) and interest may not be charged to or collected from the employee by the employer.

(c) The commission has the same rights and powers for the collection of a tax, interest, and penalty against an employer described in this section as are prescribed by this chapter for the collection of tax against an individual taxpayer.

(5) (a) Any person required to collect, truthfully account for, and pay over the tax imposed by this chapter who willfully fails to collect the tax or truthfully account for and pay over the tax or willfully attempts in any manner to evade or default the tax or the payment of the tax, shall, in addition to other penalties provided by law, be liable for a penalty as provided in Section 59-1-401.

(b) A penalty described in Subsection (1) or (2) may not be imposed for any offense to which Subsection (5)(a) applies.

(6) In case of each failure to file a statement of a payment to another person, required under authority of Section 59-10-406, relating to information at source, including the duplicate statement of tax withheld on wages, on the date prescribed for filing the statement, including extensions, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the

commission and in the same manner as tax, be paid by the person that fails to file the statement, a penalty as provided in Section 59-1-401.

(7) (a) Except as provided in Subsection (7)(b) or (c), a person is subject to a penalty as provided in Section 59-1-401 if the person fails to do one or more of the following as required by rules prescribed by the commission under this chapter:

(i) to include the person's identifying number in any return, statement, or other document;

(ii) to furnish the person's identifying number to another person; or

(iii) to include on any return, statement, or other document made with respect to another person the identifying number of the other person.

(b) A person is not subject to a penalty under Subsection (7)(a) if it is shown that the person's failure to do an act described in Subsection (7)(a) is due to reasonable cause.

(c) If a person fails to include the person's own identification number in any return, statement, or other document, a penalty under Subsection (7)(a) may not be imposed unless the person fails to supply the person's identification number to the commission within 30 days after the commission requests the identification number.

(8) In addition to the penalties required by this section, there shall be added to a tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

(9) The penalties and interest required by this section shall be:

(a) paid upon notice and demand by the commission in accordance with Section 59-1-1411; and

(b) assessed, collected, and paid in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

(10) A reference in this chapter to income tax or tax imposed by this chapter is considered to include the penalties and interest provided by this section.

(11) For purposes of Subsections (2) and (3), the amount shown as the tax by the taxpayer upon the taxpayer's return shall be taken into account in determining the amount of the deficiency only if the return is filed on or before the last day prescribed for filing of the return, including extensions.

Amended by Chapter 212, 2009 General Session

#### **59-10-541. Violations -- Civil and criminal penalties.**

(1) Every person who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, is liable for a penalty as provided in Section 59-1-401.

(2) It is unlawful for any person, with intent to evade any tax, to fail to timely remit the full amount of tax required by this chapter. A violation of this section is punishable as provided in Section 59-1-401.

(3) Any person who knowingly or intentionally makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information is guilty of a criminal violation as provided in Section 59-1-401.

(4) Any person who, with intent to evade any tax or any requirement of this

chapter, or any lawful requirement of the commission, fails to pay the tax, or to make, render, sign, or verify any return, or to supply any information, within the time required by or under this chapter, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, is liable for a civil penalty as provided in Section 59-1-401, and is also guilty of a criminal violation as provided in Section 59-1-401.

Amended by Chapter 9, 2001 General Session

**59-10-544. General powers and duties of the commission -- Deposit, distribution, or credit of revenues -- Refund reverts to state under certain circumstances.**

(1) (a) The commission shall administer and enforce a tax imposed under this chapter for which purpose it may divide the state into districts in each of which a branch office of the commission may be maintained.

(b) A county may not be divided in forming a district.

(2) (a) The commission shall daily deposit all revenue collected or received by the commission under this chapter with the state treasurer.

(b) Subject to Sections 59-10-529 and 59-10-531, the balance of the revenue described in Subsection (2)(a) shall be periodically distributed and credited to the Education Fund.

(c) If a refund the commission makes is not claimed within two years from the date the commission issues the refund:

(i) the refund reverts to the state to be credited to the Education Fund; and

(ii) no further claim may be made on the commission for the amount of the refund.

Amended by Chapter 212, 2009 General Session

**59-10-546. Application of former law.**

Nothing in this chapter applies to or affects any tax, interest, or additions to tax or penalties, imposed by or due under former Title 59, Chapter 14, in respect of taxable years commencing before January 1, 1973.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-10-1001. Title.**

This part is known as the "Nonrefundable Tax Credit Act."

Enacted by Chapter 223, 2006 General Session

**59-10-1002. Definitions.**

As used in this part:

(1) (a) Except as provided in Subsection (1)(b) or Subsection 59-10-1003(2), "claimant" means a resident or nonresident person that has state taxable income.

- (b) "Claimant" does not include an estate or trust.
- (2) Except as provided in Subsection 59-10-1003(2), "estate" means a nonresident estate or a resident estate that has state taxable income.
- (3) "Nonrefundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may:
  - (a) claim:
    - (i) as provided by statute; and
    - (ii) in an amount that does not exceed the claimant's, estate's, or trust's tax liability under this chapter for a taxable year; and
  - (b) carry forward or carry back:
    - (i) if allowed by statute; and
    - (ii) to the extent that the amount of the tax credit exceeds the claimant's, estate's, or trust's tax liability under this chapter for a taxable year.
- (4) Except as provided in Subsection 59-10-1003(2), "trust" means a nonresident trust or a resident trust that has state taxable income.

Amended by Chapter 2, 2006 Special Session 4

**59-10-1002.1. Removal of tax credit from tax return and prohibition on claiming or carrying forward a tax credit -- Conditions for removal and prohibition on claiming or carrying forward a tax credit -- Commission reporting requirements.**

- (1) As used in this section, "tax return" means a tax return filed in accordance with this chapter.
- (2) Beginning two taxable years after the requirements of Subsection (3) are met:
  - (a) the commission shall remove a tax credit allowed under this part from each tax return on which the tax credit appears; and
  - (b) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax credit.
- (3) The commission shall remove a tax credit allowed under this part from a tax return and a claimant, estate, or trust filing a tax return may not claim or carry forward the tax credit as provided in Subsection (2) if:
  - (a) the total amount of the tax credit claimed or carried forward by all claimants, estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable years beginning on or after January 1, 2002; and
  - (b) less than 10 claimants, estates, and trusts per year for the three consecutive taxable years described in Subsection (3)(a), file a tax return claiming or carrying forward the tax credit.
- (4) The commission shall, on or before the November interim meeting of the year after the taxable year in which the requirements of Subsection (3) are met:
  - (a) report to the Revenue and Taxation Interim Committee that in accordance with this section:
    - (i) the commission is required to remove a tax credit from each tax return on which the tax credit appears; and

(ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax credit; and

(b) notify each state agency required by statute to assist in the administration of the tax credit that in accordance with this section:

(i) the commission is required to remove a tax credit from each tax return on which the tax credit appears; and

(ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax credit.

Renumbered and Amended by Chapter 389, 2008 General Session

**59-10-1002.2. Apportionment of tax credits.**

(1) A nonresident individual or a part-year resident individual that claims a tax credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1021, 59-10-1022, 59-10-1023, 59-10-1024, or 59-10-1028 may only claim an apportioned amount of the tax credit equal to:

(a) for a nonresident individual, the product of:

(i) the state income tax percentage for the nonresident individual; and

(ii) the amount of the tax credit that the nonresident individual would have been allowed to claim but for the apportionment requirements of this section; or

(b) for a part-year resident individual, the product of:

(i) the state income tax percentage for the part-year resident individual; and

(ii) the amount of the tax credit that the part-year resident individual would have been allowed to claim but for the apportionment requirements of this section.

(2) A nonresident estate or trust that claims a tax credit in accordance with Section 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, or 59-10-1028 may only claim an apportioned amount of the tax credit equal to the product of:

(a) the state income tax percentage for the nonresident estate or trust; and

(b) the amount of the tax credit that the nonresident estate or trust would have been allowed to claim but for the apportionment requirements of this section.

Amended by Chapter 302, 2011 General Session

**59-10-1003. Tax credit for tax paid by individual to another state.**

(1) Except as provided in Subsection (2), a claimant, estate, or trust may claim a nonrefundable tax credit against the tax otherwise due under this chapter equal to the amount of the tax imposed:

(a) on that claimant, estate, or trust for the taxable year;

(b) by another state of the United States, the District of Columbia, or a possession of the United States; and

(c) on income:

(i) derived from sources within that other state of the United States, District of Columbia, or possession of the United States; and

(ii) if that income is also subject to tax under this chapter.

(2) A tax credit under this section may only be claimed by a:

- (a) resident claimant;
- (b) resident estate; or
- (c) resident trust.

(3) The application of the tax credit provided under this section may not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state disregarded.

(4) The tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

Renumbered and Amended by Chapter 223, 2006 General Session

**59-10-1004. Tax credit for cash contributions to sheltered workshops.**

(1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due the state under Section 59-10-104 there shall be a nonrefundable tax credit allowed for cash contributions made by a claimant, estate, or trust within the taxable year to nonprofit rehabilitation sheltered workshop facilities for persons with a disability operating in Utah that are certified by the Department of Human Services as a qualifying facility.

(2) The allowable tax credit is an amount equal to 50% of the aggregate amount of the cash contributions to the qualifying rehabilitation facilities, but the allowed tax credit may not exceed \$200.

(3) The amount of contribution claimed as a tax credit under this section may not also be claimed as a charitable deduction in determining net taxable income.

Renumbered and Amended by Chapter 223, 2006 General Session

**59-10-1005. Tax credit for at-home parent.**

(1) As used in this section:

(a) "At-home parent" means a parent:

(i) who provides full-time care at the parent's residence for one or more of the parent's own qualifying children;

(ii) who claims the qualifying child as a dependent on the parent's individual income tax return for the taxable year for which the parent claims the credit; and

(iii) if the sum of the following amounts are \$3,000 or less for the taxable year for which the parent claims the credit:

(A) the total wages, tips, and other compensation listed on all of the parent's federal Forms W-2; and

(B) the gross income listed on the parent's federal Form 1040 Schedule C, Profit or Loss From Business.

(b) "Parent" means an individual who:

(i) is the biological mother or father of a qualifying child;

(ii) is the stepfather or stepmother of a qualifying child;

(iii) (A) legally adopts a qualifying child; or

(B) has a qualifying child placed in the individual's home:

(I) by a child placing agency as defined in Section 62A-4a-601; and

- (ii) for the purpose of legally adopting the child;
- (iv) is a foster parent of a qualifying child; or
- (v) is a legal guardian of a qualifying child.
- (c) "Qualifying child" means a child who is no more than 12 months of age on the last day of the taxable year for which the tax credit is claimed.
- (2) For taxable years beginning on or after January 1, 2000, a claimant may claim on the claimant's individual income tax return a nonrefundable tax credit of \$100 for each qualifying child if:
  - (a) the claimant or another claimant filing a joint individual income tax return with the claimant is an at-home parent; and
  - (b) the adjusted gross income of all of the claimants filing the individual income tax return is less than or equal to \$50,000.
- (3) A claimant may not carry forward or carry back a tax credit authorized by this section.
- (4) It is the intent of the Legislature that for fiscal years beginning on or after fiscal year 2000-01, the Legislature appropriate from the General Fund a sufficient amount to replace Education Fund revenues expended to provide for the tax credit under this section.

Amended by Chapter 122, 2007 General Session

**59-10-1006. Historic preservation tax credit.**

- (1) (a) For tax years beginning January 1, 1993, and thereafter, there is allowed to a claimant, estate, or trust, as a nonrefundable tax credit against the income tax due, an amount equal to 20% of qualified rehabilitation expenditures, costing more than \$10,000, incurred in connection with any residential certified historic building. When qualifying expenditures of more than \$10,000 are incurred, the tax credit allowed by this section shall apply to the full amount of expenditures.
- (b) All rehabilitation work to which the tax credit may be applied shall be approved by the State Historic Preservation Office prior to completion of the rehabilitation project as meeting the Secretary of the Interior's Standards for Rehabilitation so that the office can provide corrective comments to the claimant, estate, or trust in order to preserve the historical qualities of the building.
- (c) Any amount of tax credit remaining may be carried forward to each of the five taxable years following the qualified expenditures.
- (d) The commission, in consultation with the Division of State History, shall promulgate rules to implement this section.
- (2) As used in this section:
  - (a) "Certified historic building" means a building that is listed on the National Register of Historic Places within three years of taking the credit under this section or that is located in a National Register Historic District and the building has been designated by the Division of State History as being of significance to the district.
  - (b) (i) "Qualified rehabilitation expenditures" means any amount properly chargeable to the rehabilitation and restoration of the physical elements of the building, including the historic decorative elements, and the upgrading of the structural,



mechanical, electrical, and plumbing systems to applicable codes.

(ii) "Qualified rehabilitation expenditures" does not include expenditures related to:

- (A) a claimant's, estate's, or trust's personal labor;
- (B) cost of acquisition of the property;
- (C) any expenditure attributable to the enlargement of an existing building;
- (D) rehabilitation of a certified historic building without the approval required in Subsection (1)(b); or

(E) any expenditure attributable to landscaping and other site features, outbuildings, garages, and related features.

(c) "Residential" means a building used for residential use, either owner occupied or income producing.

Renumbered and Amended by Chapter 223, 2006 General Session

**59-10-1007. Recycling market development zones tax credit.**

(1) For taxable years beginning on or after January 1, 1996, a claimant, estate, or trust in a recycling market development zone as defined in Section 63M-1-1102 may claim a nonrefundable tax credit as provided in this section.

(a) (i) There shall be allowed a tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

- (A) commercial composting; or
- (B) manufacturing facilities or plant units that:
  - (I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or
  - (II) reduce or reuse postconsumer waste material.

(ii) The Governor's Office of Economic Development shall certify that the machinery and equipment described in Subsection (1)(a)(i) are integral to the composting or recycling process:

- (A) on a form provided by the commission; and
- (B) before a claimant, estate, or trust is allowed a tax credit under this section.

(iii) The Governor's Office of Economic Development shall provide a claimant, estate, or trust seeking to claim a tax credit under this section with a copy of the form described in Subsection (1)(a)(ii).

(iv) The claimant, estate, or trust described in Subsection (1)(a)(iii) shall retain a copy of the form received under Subsection (1)(a)(iii).

(b) There shall be allowed a tax credit equal to 20% of net expenditures up to \$10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the claimant, estate, or trust for establishing and operating recycling or composting technology in Utah, with an annual maximum tax credit of \$2,000.

(2) The total tax credit allowed under this section may not exceed 40% of the Utah income tax liability of the claimant, estate, or trust prior to any tax credits in the taxable year of purchase prior to claiming the tax credit authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried forward

against the claimant's, estate's, or trusts's tax liability under this chapter in the three succeeding taxable years until the total tax credit amount is used.

(b) Tax credits not claimed by a claimant, estate, or trust on the claimant's, estate's, or trust's tax return under this chapter within three years are forfeited.

(4) The commission shall make rules governing what information shall be filed with the commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January 1, 2001, a claimant, estate, or trust may not claim or carry forward a tax credit described in Subsection (1)(a) in a taxable year during which the claimant, estate, or trust claims or carries forward a tax credit under Section 63M-1-413.

(b) For a taxable year other than a taxable year during which the claimant, estate, or trust may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a claimant, estate, or trust may claim or carry forward a tax credit described in Subsection (1)(a):

(i) if the claimant, estate, or trust may claim or carry forward the tax credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1, 2001, a claimant, estate, or trust may not claim a tax credit described in Subsection (1)(b) in a taxable year during which the claimant, estate, or trust claims or carries forward a tax credit under Section 63M-1-413.

(7) A claimant, estate, or trust may not claim or carry forward a tax credit available under this section for a taxable year during which the claimant, estate, or trust has claimed the targeted business income tax credit available under Section 63M-1-504.

Amended by Chapter 382, 2008 General Session

**59-10-1009 (Superseded 01/01/15). Definitions -- Cleaner burning fuels tax credit.**

(1) As used in this section:

(a) "Air quality standards" means that a vehicle's emissions are equal to or cleaner than the standards established in:

(i) bin 2 in Table S04-1, of 40 C.F.R. 86.1811-04(c)(6); or

(ii) for a new qualified plug-in electric drive motor vehicle, as defined in Section 30D, Internal Revenue Code, bin 4 in Table S04-1, of 40 C.F.R. 86.1811-04(c)(6).

(b) "Board" means the Air Quality Board created in Title 19, Chapter 2, Air Conservation Act.

(c) "Certified by the board" means that:

(i) a motor vehicle on which conversion equipment has been installed meets the following criteria:

(A) before the installation of conversion equipment, the vehicle does not exceed the emission cut points for a transient test driving cycle, as specified in 40 C.F.R. Part 51, Appendix E to Subpart S, or an equivalent test for the make, model, and year of the vehicle; and

(B) as a result of the installation of conversion equipment on the motor vehicle, the motor vehicle has reduced emissions; or

(ii) special mobile equipment on which conversion equipment has been installed has reduced emissions.

(d) "Clean fuel grant" means a grant a claimant, estate, or trust receives under Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act, for reimbursement of a portion of the incremental cost of the OEM vehicle or the cost of conversion equipment.

(e) "Conversion equipment" means equipment referred to in Subsection (2)(c) or (d).

(f) "OEM vehicle" has the same meaning as in Section 19-1-402.

(g) "Original purchase" means the purchase of a vehicle that has never been titled or registered and has been driven less than 7,500 miles.

(h) "Qualifying electric or hybrid vehicle" means a vehicle that:

(i) meets air quality standards;

(ii) is not fueled by natural gas;

(iii) is fueled by:

(A) electricity only; or

(B) a combination of electricity and diesel fuel, gasoline, a mixture of gasoline and ethanol, or propane; and

(iv) is an OEM vehicle except that the vehicle is fueled by a fuel described in Subsection (1)(h)(iii).

(i) "Reduced emissions" means:

(i) for purposes of a motor vehicle on which conversion equipment has been installed, that the motor vehicle's emissions of regulated pollutants, when operating on a fuel listed in Subsection (2)(d)(i) or (ii), is less than the emissions were before the installation of the conversion equipment, as demonstrated by:

(A) certification of the conversion equipment by the federal Environmental Protection Agency or by a state that has certification standards recognized by the board;

(B) testing the motor vehicle, before and after installation of the conversion equipment, in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-use Highway Vehicles and Engines, using all fuel the motor vehicle is capable of using;

(C) for a retrofit natural gas vehicle that is retrofit in accordance with Section 19-1-406, testing that as a result of the retrofit, the retrofit natural gas vehicle satisfies the emission standards applicable under Section 19-1-406; or

(D) any other test or standard recognized by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(ii) for purposes of special mobile equipment on which conversion equipment has been installed, that the special mobile equipment's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(d)(i) or (ii), is less than the emissions were before the installation of conversion equipment, as demonstrated by:

(A) certification of the conversion equipment by the federal Environmental Protection Agency or by a state that has certification standards recognized by the

board; or

(B) any other test or standard recognized by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(j) "Special mobile equipment":

(i) means any mobile equipment or vehicle not designed or used primarily for the transportation of persons or property; and

(ii) includes construction or maintenance equipment.

(2) For the taxable year beginning on or after January 1, 2014, but beginning on or before December 31, 2014, a claimant, estate, or trust may claim a nonrefundable tax credit against tax otherwise due under this chapter in an amount equal to:

(a) \$605 for the original purchase of a new qualifying electric or hybrid vehicle that is registered in this state;

(b) for the purchase of a vehicle fueled by natural gas that is registered in this state, the lesser of:

(i) \$2,500; or

(ii) 35% of the purchase price of the vehicle;

(c) 50% of the cost of equipment for conversion, if certified by the board, of a motor vehicle registered in this state minus the amount of any clean fuel conversion grant received, up to a maximum tax credit of \$2,500 per vehicle, if the motor vehicle:

(i) is to be fueled by propane, natural gas, or electricity;

(ii) is to be fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(c)(i); or

(iii) will meet the federal clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.; and

(d) 50% of the cost of equipment for conversion, if certified by the board, of a special mobile equipment engine minus the amount of any clean fuel conversion grant received, up to a maximum tax credit of \$1,000 per special mobile equipment engine, if the special mobile equipment is to be fueled by:

(i) propane, natural gas, or electricity; or

(ii) other fuel the board determines annually on or before July 1 to be:

(A) at least as effective in reducing air pollution as the fuels under Subsection (2)(d)(i); or

(B) substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

(3) A claimant, estate, or trust shall provide proof of the purchase of an item for which a tax credit is allowed under this section by:

(a) providing proof to the board in the form the board requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) retaining the written statement described in Subsection (3)(b).

(4) Except as provided by Subsection (5), the tax credit under this section is allowed only:

(a) against a tax owed under this chapter in the taxable year by the claimant, estate, or trust;

(b) for the taxable year in which an item described in Subsection (2)(a) or (b) is purchased or conversion equipment described in Subsection (2)(c) or (d) is installed; and

(c) once per vehicle.

(5) If the amount of a tax credit claimed by a claimant, estate, or trust under this section exceeds the claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability may be carried forward for a period that does not exceed the next five taxable years.

(6) In accordance with any rules prescribed by the commission under Subsection (7), the commission shall transfer at least annually from the General Fund into the Education Fund the amount by which the amount of tax credit claimed under this section for a taxable year exceeds \$500,000.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making a transfer from the General Fund into the Education Fund as required by Subsection (6).

Amended by Chapter 184, 2013 General Session

**59-10-1010. Utah low-income housing tax credit.**

(1) As used in this section:

(a) "Allocation certificate" means:

(i) the certificate prescribed by the commission and issued by the Utah Housing Corporation to each claimant, estate, or trust that specifies the percentage of the annual federal low-income housing credit that each claimant, estate, or trust may take as an annual tax credit against a tax imposed by this chapter; or

(ii) a copy of the allocation certificate that the housing sponsor provides to the claimant, estate, or trust.

(b) "Building" means a qualified low-income building as defined in Section 42(c), Internal Revenue Code.

(c) "Federal low-income housing credit" means the low-income housing credit under Section 42, Internal Revenue Code.

(d) "Housing sponsor" means a corporation in the case of a C corporation, a partnership in the case of a partnership, a corporation in the case of an S corporation, or a limited liability company in the case of a limited liability company.

(e) "Qualified allocation plan" means the qualified allocation plan adopted by the Utah Housing Corporation pursuant to Section 42(m), Internal Revenue Code.

(f) "Special low-income housing tax credit certificate" means a certificate:

(i) prescribed by the commission;

(ii) that a housing sponsor issues to a claimant, estate, or trust for a taxable year; and

(iii) that specifies the amount of a tax credit a claimant, estate, or trust may claim under this section if the claimant, estate, or trust meets the requirements of this section.

(2) (a) For taxable years beginning on or after January 1, 1995, there is allowed a nonrefundable tax credit against taxes otherwise due under this chapter for a

claimant, estate, or trust issued an allocation certificate.

(b) The tax credit shall be in an amount equal to the greater of the amount of:

(i) federal low-income housing credit to which the claimant, estate, or trust is allowed during that year multiplied by the percentage specified in an allocation certificate issued by the Utah Housing Corporation; or

(ii) tax credit specified in the special low-income housing tax credit certificate that the housing sponsor issues to the claimant, estate, or trust as provided in Subsection (2)(c).

(c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:

(i) the total amount of low-income housing tax credit under this section that:

(A) a housing sponsor is allowed for a building; and

(B) all of the claimants, estates, and trusts may claim with respect to the building if the claimants, estates, and trusts meet the requirements of this section; and

(ii) the percentage of tax credit a claimant, estate, or trust may claim:

(A) under this section if the claimant, estate, or trust meets the requirements of this section; and

(B) as provided in the agreement between the claimant, estate, or trust and the housing sponsor.

(d) (i) For the calendar year beginning on January 1, 1995, through the calendar year beginning on January 1, 2015, the aggregate annual tax credit that the Utah Housing Corporation may allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this section and Section 59-7-607 is an amount equal to the product of:

(A) 12.5 cents; and

(B) the population of Utah.

(ii) For purposes of this section, the population of Utah shall be determined in accordance with Section 146(j), Internal Revenue Code.

(3) (a) By October 1, 1994, the Utah Housing Corporation shall determine criteria and procedures for allocating the tax credit under this section and Section 59-7-607 and incorporate the criteria and procedures into the Utah Housing Corporation's qualified allocation plan.

(b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a) based on:

(i) the number of affordable housing units to be created in Utah for low and moderate income persons in the residential housing development of which the building is a part;

(ii) the level of area median income being served by the development;

(iii) the need for the tax credit for the economic feasibility of the development;

and

(iv) the extended period for which the development commits to remain as affordable housing.

(4) (a) The following may apply to the Utah Housing Corporation for a tax credit under this section:

(i) any housing sponsor that is a claimant, estate, or trust if that housing sponsor has received an allocation of the federal low-income housing credit; or

(ii) any applicant for an allocation of the federal low-income housing credit if that applicant is a claimant, estate, or trust.

(b) The Utah Housing Corporation may not require fees for applications of the tax credit under this section in addition to those fees required for applications for the federal low-income housing credit.

(5) (a) The Utah Housing Corporation shall determine the amount of the tax credit to allocate to a qualifying housing sponsor in accordance with the qualified allocation plan of the Utah Housing Corporation.

(b) (i) The Utah Housing Corporation shall allocate the tax credit to housing sponsors by issuing an allocation certificate to qualifying housing sponsors.

(ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed percentage of the federal low-income housing credit as determined by the Utah Housing Corporation.

(c) The percentage specified in an allocation certificate may not exceed 100% of the federal low-income housing credit.

(6) A housing sponsor shall provide a copy of the allocation certificate to each claimant, estate, or trust that is issued a special low-income housing tax credit certificate.

(7) (a) A housing sponsor shall provide to the commission a list of:

(i) the claimants, estates, and trusts issued a special low-income housing tax credit certificate; and

(ii) for each claimant, estate, or trust described in Subsection (7)(a)(i), the amount of tax credit listed on the special low-income housing tax credit certificate.

(b) A housing sponsor shall provide the list required by Subsection (7)(a):

(i) to the commission;

(ii) on a form provided by the commission; and

(iii) with the housing sponsor's tax return for each taxable year for which the housing sponsor issues a special low-income housing tax credit certificate described in this Subsection (7).

(8) (a) All elections made by the claimant, estate, or trust pursuant to Section 42, Internal Revenue Code, shall apply to this section.

(b) (i) If a claimant, estate, or trust is required to recapture a portion of any federal low-income housing credit, the claimant, estate, or trust shall also be required to recapture a portion of any state tax credits authorized by this section.

(ii) The state recapture amount shall be equal to the percentage of the state tax credit that equals the proportion the federal recapture amount bears to the original federal low-income housing credit amount subject to recapture.

(9) (a) Any tax credits returned to the Utah Housing Corporation in any year may be reallocated within the same time period as provided in Section 42, Internal Revenue Code.

(b) Tax credits that are unallocated by the Utah Housing Corporation in any year may be carried over for allocation in the subsequent year.

(10) (a) Amounts otherwise qualifying for the tax credit, but not allowable because the tax credit exceeds the tax, may be carried back three years or may be carried forward five years as a tax credit.

(b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:

- (i) before the application of the tax credits earned in the current year; and
- (ii) on a first-earned first-used basis.

(11) Any tax credit taken in this section may be subject to an annual audit by the commission.

(12) The Utah Housing Corporation shall provide an annual report to the Revenue and Taxation Interim Committee which shall include at least:

- (a) the purpose and effectiveness of the tax credits; and
- (b) the benefits of the tax credits to the state.

(13) The commission may, in consultation with the Utah Housing Corporation, promulgate rules to implement this section.

Renumbered and Amended by Chapter 223, 2006 General Session

**59-10-1011. Tutoring tax credits for dependents with a disability.**

(1) For purposes of this section:

(a) "Dependent with a disability" means a person who:

- (i) has a disability under Section 53A-15-301;
- (ii) attends a public or private kindergarten, elementary, or secondary school;

and

(iii) is eligible to receive disability program money under Section 53A-17a-111.

(b) (i) "Tutoring" means educational services:

- (A) approved by an individual education plan team;
- (B) provided to a dependent with a disability; and

(C) that supplement classroom instruction the dependent with a disability described in Subsection (1)(b)(i)(B) receives at a public or private kindergarten, elementary, or secondary school in the state.

(ii) "Tutoring" does not include:

- (A) purchases of instructional books and material; or
- (B) payments for attendance at extracurricular activities including sporting events, musical or dramatic events, speech activities, or driver education.

(2) (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after January 1, 1996, but beginning on or before December 31, 2009, a claimant allowed to claim a dependent with a disability as a dependent under this section may claim for each dependent with a disability a nonrefundable tutoring tax credit in an amount equal to 25% of the costs paid by the claimant for tutoring the dependent with a disability.

(b) The tutoring tax credit under Subsection (2)(a) may not exceed \$100.

(3) The tutoring tax credit under Subsection (2) may be claimed by a claimant only in the taxable year in which the claimant pays the tutoring costs for which the tax credit is claimed.

Amended by Chapter 366, 2011 General Session



**59-10-1012. Tax credits for research activities conducted in the state -- Carry forward -- Commission to report modification or repeal of certain federal provisions -- Revenue and Taxation Interim Committee study.**

(1) (a) A claimant, estate, or trust meeting the requirements of this section may claim the following nonrefundable tax credits:

(i) a research tax credit of 5% of the claimant's, estate's, or trust's qualified research expenses for the current taxable year that exceed the base amount provided for under Subsection (3);

(ii) a tax credit for a payment to a qualified organization for basic research as provided in Section 41(e), Internal Revenue Code of 5% for the current taxable year that exceed the base amount provided for under Subsection (3); and

(iii) a tax credit equal to 7.5% of the claimant's, estate's, or trust's qualified research expenses for the current taxable year.

(b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under:

(i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the claimant, estate, or trust incurs the qualified research expenses; or

(ii) Subsection (1)(a)(ii), for the taxable year for which the claimant, estate, or trust makes the payment to the qualified organization.

(c) The tax credits provided for in this section do not include the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

(2) Except as specifically provided for in this section:

(a) the tax credits authorized under Subsection (1) shall be calculated as provided in Section 41, Internal Revenue Code; and

(b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating the tax credits authorized under Subsection (1).

(3) For purposes of this section:

(a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal Revenue Code, except that:

(i) the base amount does not include the calculation of the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code;

(ii) a claimant's, estate's, or trust's gross receipts include only those gross receipts attributable to sources within this state as provided in Section 59-10-118; and

(iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating the base amount, a claimant, estate, or trust:

(A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B), Internal Revenue Code, regardless of whether the claimant, estate, or trust meets the requirements of Section 41(c)(3)(B)(i)(I) or (II), Internal Revenue Code; and

(B) may not revoke an election to be treated as a start-up company under Subsection (3)(a)(iii)(A);

(b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state;

(c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state;

(d) "qualified research expenses" is as defined and calculated in Section 41(b),

Internal Revenue Code, except that the term includes only:

- (i) in-house research expenses incurred in this state; and
- (ii) contract research expenses incurred in this state; and
- (e) a tax credit provided for in this section is not terminated if a credit terminates under Section 41, Internal Revenue Code.

(4) (a) If the amount of a tax credit claimed by a claimant, estate, or trust under Subsection (1)(a)(i) or (ii) exceeds the claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

- (i) may be carried forward for a period that does not exceed the next 14 taxable years; and

- (ii) may not be carried back to a taxable year preceding the current taxable year.

(b) A claimant, estate, or trust may not carry forward the tax credit allowed by Subsection (1)(a)(iii).

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that amounts paid to the qualified organizations are for basic research conducted in this state.

(6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Revenue and Taxation Interim Committee within 60 days after the day on which the modification or repeal becomes effective.

(7) (a) The Revenue and Taxation Interim Committee shall review the tax credits provided for in this section on or before October 1 of the year after the year in which the commission reports under Subsection (6) a modification or repeal of a provision of Section 41, Internal Revenue Code.

(b) Notwithstanding Subsection (7)(a), the Revenue and Taxation Interim Committee is not required to review the tax credits provided for in this section if the only modification to a provision of Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Revenue and Taxation Interim Committee shall address in a review under this section:

- (i) the cost of the tax credits provided for in this section;
- (ii) the purpose and effectiveness of the tax credits provided for in this section;
- (iii) whether the tax credits provided for in this section benefit the state; and
- (iv) whether the tax credits provided for in this section should be:
  - (A) continued;
  - (B) modified; or
  - (C) repealed.

(d) If the Revenue and Taxation Interim Committee reviews the tax credits provided for in this section, the committee shall report its findings to the Legislative Management Committee on or before the November interim meeting of the year in which the Revenue and Taxation Interim Committee reviews the tax credits.

Amended by Chapter 405, 2012 General Session

**59-10-1013. Tax credits for machinery, equipment, or both primarily used for conducting qualified research or basic research -- Carry forward -- Commission to report modification or repeal of certain federal provisions -- Revenue and Taxation Interim Committee study.**

(1) As used in this section:

(a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state.

(b) "Equipment" includes:

- (i) a computer;
- (ii) computer equipment; and
- (iii) computer software.

(c) "Purchase price":

(i) includes the cost of installing an item of machinery or equipment; and  
(ii) does not include a tax imposed under Chapter 12, Sales and Use Tax Act, on an item of machinery or equipment.

(d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

(e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state.

(2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a claimant, estate, or trust meeting the requirements of this section may claim the following nonrefundable tax credits:

- (i) a tax credit of 6% of the purchase price of machinery, equipment, or both:
  - (A) purchased by the claimant, estate, or trust during the taxable year;
  - (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act; and
  - (C) that is primarily used to conduct qualified research in this state; and
- (ii) a tax credit of 6% of the purchase price paid by the claimant, estate, or trust for machinery, equipment, or both:
  - (A) purchased by the claimant, estate, or trust during the taxable year;
  - (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act;
  - (C) that is donated to a qualified organization; and
  - (D) that is primarily used to conduct basic research in this state.

(b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under this section for the taxable year for which the claimant, estate, or trust purchases the machinery, equipment, or both.

(c) If a claimant, estate, or trust qualifies for a tax credit under Subsection (2)(a) for a purchase of machinery, equipment, or both, the claimant, estate, or trust may not claim the tax credit or carry the tax credit forward if the machinery, equipment, or both, is primarily used to conduct qualified research in the state for a time period that is less than 12 consecutive months.

(3) Notwithstanding Section 41(h), Internal Revenue Code, a tax credit provided for in this section is not terminated if a credit terminates under Section 41, Internal Revenue Code.

(4) If the amount of a tax credit claimed by a claimant, estate, or trust under this

section exceeds a claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

(a) may be carried forward for a period that does not exceed the next 14 taxable years; and

(b) may not be carried back to a taxable year preceding the current taxable year.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that machinery, equipment, or both provided to the qualified organization is to be primarily used to conduct basic research in this state.

(6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Revenue and Taxation Interim Committee within 60 days after the day on which the modification or repeal becomes effective.

(7) (a) The Revenue and Taxation Interim Committee shall review the tax credits provided for in this section on or before October 1 of the year after the year in which the commission reports under Subsection (6) a modification or repeal of a provision of Section 41, Internal Revenue Code.

(b) Notwithstanding Subsection (7)(a), the Revenue and Taxation Interim Committee is not required to review the tax credits provided for in this section if the only modification to a provision of Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Revenue and Taxation Interim Committee shall address in a review under this section the:

- (i) cost of the tax credits provided for in this section;
- (ii) purpose and effectiveness of the tax credits provided for in this section;
- (iii) whether the tax credits provided for in this section benefit the state; and
- (iv) whether the tax credits provided for in this section should be:
  - (A) continued;
  - (B) modified; or
  - (C) repealed.

(d) If the Revenue and Taxation Interim Committee reviews the tax credits provided for in this section, the committee shall report its findings to the Legislative Management Committee on or before the November interim meeting of the year in which the Revenue and Taxation Interim Committee reviews the tax credits.

Amended by Chapter 384, 2011 General Session

**59-10-1014. Renewable energy systems tax credit -- Definitions -- Limitations -- Certification -- Rulemaking authority.**

(1) As used in this part:

(a) "Active solar system":

(i) means a system of equipment capable of collecting and converting incident solar radiation into thermal, mechanical, or electrical energy, and transferring these

forms of energy by a separate apparatus to storage or to the point of use; and

(ii) includes water heating, space heating or cooling, and electrical or mechanical energy generation.

(b) "Biomass system" means any system of apparatus and equipment for use in converting material into biomass energy, as defined in Section 59-12-102, and transporting that energy by separate apparatus to the point of use or storage.

(c) "Business entity" means any entity under which business is conducted or transacted.

(d) "Direct-use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, and aquaculture.

(e) "Geothermal electricity" means energy contained in heat that continuously flows outward from the earth that is used as a sole source of energy to produce electricity.

(f) "Geothermal heat-pump system" means a system of apparatus and equipment enabling the use of thermal properties contained in the earth at temperatures well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure.

(g) "Hydroenergy system" means a system of apparatus and equipment capable of intercepting and converting kinetic water energy into electrical or mechanical energy and transferring this form of energy by separate apparatus to the point of use or storage.

(h) "Office" means the Office of Energy Development created in Section 63M-4-401.

(i) "Passive solar system":

(i) means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site; and

(ii) includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(j) "Residential energy system" means any active solar, passive solar, biomass, direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to supply energy to or for any residential unit.

(k) "Residential unit" means any house, condominium, apartment, or similar dwelling unit that serves as a dwelling for a person, group of persons, or a family but does not include property subject to a fee under:

(i) Section 59-2-404;

(ii) Section 59-2-405;

(iii) Section 59-2-405.1;

(iv) Section 59-2-405.2; or

(v) Section 59-2-405.3.

(l) "Wind system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and

transferring these forms of energy by a separate apparatus to the point of use or storage.

(2) For taxable years beginning on or after January 1, 2007, a claimant, estate, or trust may claim a nonrefundable tax credit as provided in this section if:

(a) a claimant, estate, or trust that is not a business entity purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy for the claimant's, estate's, or trust's residential unit in the state; or

(b) (i) a claimant, estate, or trust that is a business entity sells a residential unit to another claimant, estate, or trust that is not a business entity before making a claim for a tax credit under Subsection (6) or Section 59-7-614; and

(ii) the claimant, estate, or trust that is a business entity assigns its right to the tax credit to the claimant, estate, or trust that is not a business entity as provided in Subsection (6)(c) or Subsection 59-7-614(2)(a)(iii).

(3) (a) The tax credit described in Subsection (2) is equal to 25% of the reasonable costs of each residential energy system, including installation costs, against any income tax liability of the claimant, estate, or trust under this chapter for the taxable year in which the residential energy system is completed and placed in service.

(b) The total amount of each tax credit under this section may not exceed \$2,000 per residential unit.

(c) The tax credit under this section is allowed for any residential energy system completed and placed in service on or after January 1, 2007.

(4) (a) The tax credit provided for in this section shall be claimed in the return for the taxable year in which the residential energy system is completed and placed in service.

(b) Additional residential energy systems or parts of residential energy systems may be similarly claimed in returns for subsequent taxable years as long as the total amount claimed does not exceed \$2,000 per residential unit.

(c) If the amount of the tax credit under this section exceeds the income tax liability of the claimant, estate, or trust claiming the tax credit under this section for that taxable year, then the amount not used may be carried over for a period that does not exceed the next four taxable years.

(5) (a) A claimant, estate, or trust that is not a business entity that leases a residential energy system installed on a residential unit is eligible for the residential energy tax credit if that claimant, estate, or trust confirms that the lessor irrevocably elects not to claim the tax credit.

(b) Only the principal recovery portion of the lease payments, which is the cost incurred by the claimant, estate, or trust in acquiring the residential energy system excluding interest charges and maintenance expenses, is eligible for the tax credits.

(c) A claimant, estate, or trust described in this Subsection (5) may use the tax credits for a period that does not exceed seven years from the initiation of the lease.

(6) (a) A claimant, estate, or trust that is a business entity that purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy required for a residential unit owned or used by the claimant, estate, or trust that is a business entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this Subsection (6).

(b) (i) For taxable years beginning on or after January 1, 2007, a claimant, estate, or trust that is a business entity is entitled to a nonrefundable tax credit equal to 25% of the reasonable costs of a residential energy system installed with respect to each residential unit it owns or uses, including installation costs, against any tax due under this chapter for the taxable year in which the energy system is completed and placed in service.

(ii) The total amount of the tax credit under this Subsection (6) may not exceed \$2,000 per residential unit.

(iii) The tax credit under this Subsection (6) is allowed for any residential energy system completed and placed in service on or after January 1, 2007.

(c) If a claimant, estate, or trust that is a business entity sells a residential unit to a claimant, estate, or trust that is not a business entity before making a claim for the tax credit under this Subsection (6), the claimant, estate, or trust that is a business entity may:

(i) assign its right to this tax credit to the claimant, estate, or trust that is not a business entity; and

(ii) if the claimant, estate, or trust that is a business entity assigns its right to the tax credit to a claimant, estate, or trust that is not a business entity under Subsection (6)(c)(i), the claimant, estate, or trust that is not a business entity may claim the tax credit as if that claimant, estate, or trust that is not a business entity had completed or participated in the costs of the residential energy system under this section.

(7) (a) A tax credit under this section may be claimed for the taxable year in which the residential energy system is completed and placed in service.

(b) Additional residential energy systems or parts of residential energy systems may be claimed for subsequent years.

(c) If the amount of a tax credit under this section exceeds the tax liability of the claimant, estate, or trust claiming the tax credit under this section for a taxable year, the amount of the tax credit exceeding the tax liability may be carried over for a period which does not exceed the next four taxable years.

(8) (a) Except as provided in Subsection (8)(b), tax credits provided for under this section are in addition to any tax credits provided under the laws or rules and regulations of the United States.

(b) A purchaser of one or more solar units that claims a tax credit under Section 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this section for that purchase.

(9) (a) The office may set standards for residential energy systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(b) The office may set standards for residential and commercial energy systems that establish the reasonable costs of an energy system, as used in Subsections (3)(a) and (6)(b)(i), as an amount per unit of energy production.

(c) A tax credit may not be taken under this section until the office has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(10) The office and the commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.

(11) (a) On or before October 1, 2012, and every five years thereafter, the Revenue and Taxation Interim Committee shall review each tax credit provided by this section and report its recommendations to the Legislative Management Committee concerning whether the credit should be continued, modified, or repealed.

(b) The Revenue and Taxation Interim Committee's report under Subsection (11)(a) shall include information concerning the cost of the credit, the purpose and effectiveness of the credit, and the state's benefit from the credit.

Amended by Chapter 37, 2012 General Session

**59-10-1015. Definitions -- Tax credit for live organ donation expenses -- Rulemaking authority.**

- (1) As used in this section:
  - (a) "human organ" means:
    - (i) human bone marrow; or
    - (ii) any part of a human:
      - (A) intestine;
      - (B) kidney;
      - (C) liver;
      - (D) lung; or
      - (E) pancreas;
  - (b) "live organ donation" means that an individual who is living donates one or more of that individual's human organs:
    - (i) to another human; and
    - (ii) to be transplanted:
      - (A) using a medical procedure; and
      - (B) to the body of the other human; and
    - (c) (i) "live organ donation expenses" means the total amount of expenses:
      - (A) incurred by a claimant; and
      - (B) that:
        - (I) are not reimbursed to that claimant by any person;
        - (II) are directly related to a live organ donation by:
          - (Aa) the claimant; or
          - (Bb) another individual that the claimant is allowed to claim as a dependent in accordance with Section 151, Internal Revenue Code; and
        - (III) are for:
          - (Aa) travel;
          - (Bb) lodging; or
          - (Cc) a lost wage; and
      - (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define "lost wage."
  - (2) For taxable years beginning on or after January 1, 2005, a claimant may



claim a nonrefundable tax credit:

- (a) as provided in this section;
  - (b) against taxes otherwise due under this chapter;
  - (c) for live organ donation expenses incurred during the taxable year for which the live organ donation occurs; and
  - (d) in an amount equal to the lesser of:
    - (i) the actual amount of the live organ donation expenses; or
    - (ii) \$10,000.
- (3) If the amount of a tax credit under this section exceeds a claimant's tax liability under this chapter for a taxable year, the amount of the tax credit that exceeds the claimant's tax liability may be carried forward for a period that does not exceed the next five taxable years.

Amended by Chapter 382, 2008 General Session

**59-10-1017. Utah Educational Savings Plan tax credit.**

- (1) As used in this section:
- (a) "Account owner" is as defined in Section 53B-8a-102.
  - (b) "Higher education costs" is as defined in Section 53B-8a-102.
  - (c) "Maximum amount of a qualified investment for the taxable year" means, for a taxable year:
    - (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or trust is other than husband and wife account owners who file a single return jointly, the maximum amount of a qualified investment:
      - (A) listed in Subsection 53B-8a-106(1)(e)(ii); and
      - (B) increased or kept for that taxable year in accordance with Subsections 53B-8a-106(1)(f) and (g); or
    - (ii) for claimants who are husband and wife account owners who file a single return jointly, the maximum amount of a qualified investment:
      - (A) listed in Subsection 53B-8a-106(1)(e)(iii); and
      - (B) increased or kept for that taxable year in accordance with Subsections 53B-8a-106(1)(f) and (g).
  - (d) "Qualified investment" is as defined in Section 53B-8a-102.
- (2) Except as provided in Section 59-10-1002.2, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax credit equal to the product of:
- (a) the lesser of:
    - (i) the amount of a qualified investment the claimant, estate, or trust:
      - (A) makes during the taxable year; and
      - (B) does not deduct:
        - (I) for a claimant, on the claimant's federal individual income tax return; or
        - (II) for an estate or trust, on the estate's or trust's federal income tax return for estates and trusts; or
    - (ii) the maximum amount of a qualified investment for the taxable year if the amount described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment for the taxable year; and

- (b) 5%.
- (3) A tax credit under this section may not be carried forward or carried back.

Amended by Chapter 6, 2010 General Session

**59-10-1018. Definitions -- Nonrefundable taxpayer tax credits.**

- (1) As used in this section:
  - (a) "Dependent adult with a disability" means an individual who:
    - (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year;
    - (ii) is not the claimant or the claimant's spouse; and
    - (iii) is:
      - (A) 18 years of age or older;
      - (B) eligible for services under Title 62A, Chapter 5, Services for People with Disabilities; and
      - (C) not enrolled in an education program for students with disabilities that is authorized under Section 53A-15-301.
  - (b) "Dependent child with a disability" means an individual 21 years of age or younger who:
    - (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year;
    - (ii) is not the claimant or the claimant's spouse; and
    - (iii) is:
      - (A) an eligible student with a disability; or
      - (B) identified under guidelines of the Department of Health as qualified for Early Intervention or Infant Development Services.
  - (c) "Eligible student with a disability" means an individual who is:
    - (i) diagnosed by a school district representative under rules the State Board of Education adopts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as having a disability classified as autism, deafness, preschool developmental delay, dual sensory impairment, hearing impairment, intellectual disability, multidisability, orthopedic impairment, other health impairment, traumatic brain injury, or visual impairment;
    - (ii) not receiving residential services from the Division of Services for People with Disabilities created under Section 62A-5-102 or a school established under Title 53A, Chapter 25b, Utah Schools for the Deaf and the Blind; and
    - (iii) (A) enrolled in an education program for students with disabilities that is authorized under Section 53A-15-301; or
    - (B) a recipient of a scholarship awarded under Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act.
  - (d) "Head of household filing status" means a head of household, as defined in Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for the taxable year.
  - (e) "Joint filing status" means:
    - (i) a husband and wife who file a single return jointly under this chapter for a

taxable year; or

(ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a single federal individual income tax return for the taxable year.

(f) "Single filing status" means:

(i) a single individual who files a single federal individual income tax return for the taxable year; or

(ii) a married individual who:

(A) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and

(B) files a single federal individual income tax return for the taxable year.

(2) Except as provided in Section 59-10-1002.2, and subject to Subsections (3) through (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal to the sum of:

(a) (i) for a claimant that deducts the standard deduction on the claimant's federal individual income tax return for the taxable year, 6% of the amount the claimant deducts as allowed as the standard deduction on the claimant's federal individual income tax return for that taxable year; or

(ii) for a claimant that itemizes deductions on the claimant's federal individual income tax return for the taxable year, the product of:

(A) the difference between:

(I) the amount the claimant deducts as allowed as an itemized deduction on the claimant's federal individual income tax return for that taxable year; and

(II) any amount of state or local income taxes the claimant deducts as allowed as an itemized deduction on the claimant's federal individual income tax return for that taxable year; and

(B) 6%; and

(b) the product of:

(i) 75% of the total amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year, plus an additional 75% of the amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year with respect to each dependent adult with a disability or dependent child with a disability; and

(ii) 6%.

(3) A claimant may not carry forward or carry back a tax credit under this section.

(4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar by which a claimant's state taxable income exceeds:

(a) for a claimant who has a single filing status, \$12,000;

(b) for a claimant who has a head of household filing status, \$18,000; or

(c) for a claimant who has a joint filing status, \$24,000.

(5) (a) For taxable years beginning on or after January 1, 2009, the commission shall increase or decrease the following dollar amounts by a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2007:

- (i) the dollar amount listed in Subsection (4)(a); and
- (ii) the dollar amount listed in Subsection (4)(b).
- (b) After the commission increases or decreases the dollar amounts listed in Subsection (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the nearest whole dollar.
- (c) After the commission rounds the dollar amounts as required by Subsection (5)(b), the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that the dollar amount listed in Subsection (4)(c) is equal to the product of:
  - (i) the dollar amount listed in Subsection (4)(a); and
  - (ii) two.
- (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

Amended by Chapter 295, 2012 General Session

**59-10-1019. Definitions -- Nonrefundable retirement tax credits.**

- (1) As used in this section:
  - (a) "Eligible age 65 or older retiree" means a claimant, regardless of whether that claimant is retired, who:
    - (i) is 65 years of age or older; and
    - (ii) was born on or before December 31, 1952.
  - (b) (i) "Eligible retirement income" means income received by an eligible under age 65 retiree as a pension or annuity if that pension or annuity is:
    - (A) paid to the eligible under age 65 retiree or the surviving spouse of an eligible under age 65 retiree; and
    - (B) (I) paid from an annuity contract purchased by an employer under a plan that meets the requirements of Section 404(a)(2), Internal Revenue Code;
    - (II) purchased by an employee under a plan that meets the requirements of Section 408, Internal Revenue Code; or
    - (III) paid by:
      - (Aa) the United States;
      - (Bb) a state or a political subdivision of a state; or
      - (Cc) the District of Columbia.
  - (ii) "Eligible retirement income" does not include amounts received by the spouse of a living eligible under age 65 retiree because of the eligible under age 65 retiree's having been employed in a community property state.
  - (c) "Eligible under age 65 retiree" means a claimant, regardless of whether that claimant is retired, who:
    - (i) is younger than 65 years of age;
    - (ii) was born on or before December 31, 1952; and
    - (iii) has eligible retirement income for the taxable year for which a tax credit is claimed under this section.
  - (d) "Head of household filing status" is as defined in Section 59-10-1018.

- (e) "Joint filing status" is as defined in Section 59-10-1018.
- (f) "Married filing separately status" means a married individual who:
  - (i) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and
  - (ii) files a single federal individual income tax return for the taxable year.
- (g) "Modified adjusted gross income" means the sum of an eligible age 65 or older retiree's or eligible under age 65 retiree's:
  - (i) adjusted gross income for the taxable year for which a tax credit is claimed under this section;
  - (ii) any interest income that is not included in adjusted gross income for the taxable year described in Subsection (1)(g)(i); and
  - (iii) any addition to adjusted gross income required by Section 59-10-114 for the taxable year described in Subsection (1)(g)(i).
- (h) "Single filing status" means a single individual who files a single federal individual income tax return for the taxable year.
- (2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) through (6):
  - (a) each eligible age 65 or older retiree may claim a nonrefundable tax credit of \$450 against taxes otherwise due under this part; or
  - (b) each eligible under age 65 retiree may claim a nonrefundable tax credit against taxes otherwise due under this part in an amount equal to the lesser of:
    - (i) \$288; or
    - (ii) the product of:
      - (A) the eligible under age 65 retiree's eligible retirement income for the taxable year for which the eligible under age 65 retiree claims a tax credit under this section; and
      - (B) 6%.
- (3) A tax credit under this section may not be carried forward or carried back.
- (4) The sum of the tax credits allowed by Subsection (2) claimed on one return filed under this part shall be reduced by \$.025 for each dollar by which modified adjusted gross income for purposes of the return exceeds:
  - (a) for a federal individual income tax return that is allowed a married filing separately status, \$16,000;
  - (b) for a federal individual income tax return that is allowed a single filing status, \$25,000;
  - (c) for a federal individual income tax return that is allowed a head of household filing status, \$32,000; or
  - (d) for a return under this chapter that is allowed a joint filing status, \$32,000.
- (5) For purposes of determining the ownership of items of retirement income under this section, common law doctrine shall be applied in all cases even though some items of retirement income may have originated from service or investments in a community property state.

Renumbered and Amended by Chapter 389, 2008 General Session

**59-10-1020. Nonrefundable estate or trust tax credit.**

(1) For taxable years beginning on or after January 1, 2008, an estate or trust may claim a nonrefundable tax credit against taxes otherwise due under Part 2, Trusts and Estates, equal to the product of:

(a) the sum of:

(i) the amount that a resident or nonresident estate or trust deducts under Section 163, Internal Revenue Code, for interest paid or accrued, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(ii) the amount that a resident or nonresident estate or trust deducts under Section 164, Internal Revenue Code, for taxes paid or accrued other than for any amount paid or accrued for state or local income taxes for the taxable year, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(iii) the amount that a resident or nonresident estate or trust other than a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(iv) subject to Subsection (3), the amount that a resident or nonresident estate or trust deducts as an attorney, accountant, or return preparer fee, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(v) subject to Subsection (3), the amount that a resident or nonresident estate or trust deducts as an other deduction or miscellaneous itemized deduction, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(b) 6%.

(2) An estate or trust may not carry forward or carry back a tax credit under this section.

(3) The tax credit allowed by Subsection (1) shall be reduced by \$.013 for each dollar by which an estate's or trust's taxable income exceeds \$12,000.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) for purposes of Subsection (1)(a)(iv), the commission may make rules for determining what constitutes an attorney, accountant, or return preparer fee if that attorney, accountant, or return preparer fee is consistent with an attorney, accountant, or return preparer fee that may be deducted on a federal income tax return for estates and trusts; or

(b) for purposes of Subsection (1)(a)(v), the commission may make rules for determining what constitutes an other deduction or miscellaneous itemized deduction if that other deduction or miscellaneous itemized deduction is consistent with an other deduction or miscellaneous itemized deduction that may be deducted on a federal income tax return for estates and trusts.

**59-10-1021. Nonrefundable medical care savings account tax credit.**

(1) As used in this section:

(a) "Account administrator" is as defined in Section 31A-32a-102.

(b) "Account holder" is as defined in Section 31A-32a-102.

(c) "Eligible medical expense" is as defined in Section 31A-32a-102.

(d) "Eligible spouse claimants" means claimants who are spouses if:

(i) the claimants file a single return jointly as husband and wife;

(ii) neither spouse is covered by:

(A) health care insurance as defined in Section 31A-1-301; or

(B) a self-funded plan that covers the other spouse; and

(iii) each spouse is an account holder.

(e) "Medical care savings account" is as defined in Section 31A-32a-102.

(2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) and (4), for taxable years beginning on or after January 1, 2008, a claimant may claim a nonrefundable tax credit for:

(a) a contribution:

(i) made during the taxable year;

(ii) made to a medical care savings account in accordance with Title 31A, Chapter 32a, Medical Care Savings Account Act;

(iii) that is accepted by the account administrator; and

(iv) that the claimant does not deduct on the claimant's federal individual income tax return under Section 220, Internal Revenue Code; and

(b) interest on the contribution described in Subsection (2)(a).

(3) (a) For eligible spouse claimants, a tax credit under this section is equal to the product of:

(i) the greater of:

(A) the sum of:

(I) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care Savings Account Act, by or on behalf of the husband, not to exceed the amount described in Subsection 31A-32a-103(2)(a)(i); and

(II) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care Savings Account Act, by or on behalf of the wife, not to exceed the amount described in Subsection 31A-32a-103(2)(a)(i); or

(B) an amount equal to the sum of all eligible medical expenses paid by the eligible spouse claimants on behalf of:

(I) the husband;

(II) the wife; or

(III) a dependent of the:

(Aa) husband; or

(Bb) wife; and

(ii) 5%.

(b) For a claimant other than eligible spouse claimants, a tax credit under this section is equal to the product of:

- (i) the greater of:
  - (A) the amount contributed by or on behalf of the claimant, not to exceed the amount described in Subsection 31A-32a-103(2)(a)(i); or
  - (B) an amount equal to the sum of all eligible medical expenses paid by the claimant on behalf of:
    - (I) the claimant;
    - (II) the claimant's spouse; or
    - (III) a dependent of the claimant; and
- (ii) 5%.
- (4) A tax credit under this section may not be carried forward or carried back.

Enacted by Chapter 389, 2008 General Session

**59-10-1022. Nonrefundable tax credit for capital gain transactions.**

- (1) As used in this section:
  - (a) (i) "Capital gain transaction" means a transaction that results in a:
    - (A) short-term capital gain; or
    - (B) long-term capital gain.
  - (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "transaction."
  - (b) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.
  - (c) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.
  - (d) "Qualifying stock" means stock that is:
    - (i) (A) common; or
    - (B) preferred;
    - (ii) as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, originally issued to:
      - (A) a claimant, estate, or trust; or
      - (B) a partnership if the claimant, estate, or trust that claims a tax credit under this section:
        - (I) was a partner on the day on which the stock was issued; and
        - (II) remains a partner until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; and
    - (iii) issued:
      - (A) by a Utah small business corporation;
      - (B) on or after January 1, 2008; and
      - (C) for:
        - (I) money; or
        - (II) other property, except for stock or securities.
    - (e) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.
    - (f) (i) "Utah small business corporation" means a corporation that:
      - (A) except as provided in Subsection (1)(f)(ii), is a small business corporation



as defined in Section 1244(c)(3), Internal Revenue Code;

(B) except as provided in Subsection (1)(f)(iii), meets the requirements of Section 1244(c)(1)(C), Internal Revenue Code; and

(C) has its commercial domicile in this state.

(ii) The dollar amount listed in Section 1244(c)(3)(A) is considered to be \$2,500,000.

(iii) The phrase "the date the loss on such stock was sustained" in Sections 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section."

(2) For taxable years beginning on or after January 1, 2008, a claimant, estate, or trust that meets the requirements of Subsection (3) may claim a nonrefundable tax credit equal to the product of:

(a) the total amount of the claimant's, estate's, or trust's short-term capital gain or long-term capital gain on a capital gain transaction that occurs on or after January 1, 2008; and

(b) 5%.

(3) For purposes of Subsection (2), a claimant, estate, or trust may claim the nonrefundable tax credit allowed by Subsection (2) if:

(a) 70% or more of the gross proceeds of the capital gain transaction are expended:

(i) to purchase qualifying stock in a Utah small business corporation; and

(ii) within a 12-month period after the day on which the capital gain transaction occurs; and

(b) prior to the purchase of the qualifying stock described in Subsection (3)(a)(i), the claimant, estate, or trust did not have an ownership interest in the Utah small business corporation that issued the qualifying stock.

(4) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(a) defining the term "gross proceeds"; and

(b) prescribing the circumstances under which a claimant, estate, or trust has an ownership interest in a Utah small business corporation.

Enacted by Chapter 389, 2008 General Session

**59-10-1023. Nonrefundable tax credit for amounts paid under a health benefit plan.**

(1) As used in this section:

(a) "Claimant with dependents" means a claimant:

(i) regardless of the claimant's filing status for purposes of filing a federal individual income tax return for the taxable year; and

(ii) who claims one or more dependents under Section 151, Internal Revenue Code, as allowed on the claimant's federal individual income tax return for the taxable

year.

(b) "Eligible insured individual" means:

(i) the claimant who is insured under a health benefit plan;

(ii) the spouse of the claimant described in Subsection (1)(b)(i) if:

(A) the claimant files a single return jointly under this chapter with the claimant's spouse for the taxable year; and

(B) the spouse is insured under the health benefit plan described in Subsection (1)(b)(i); or

(iii) a dependent of the claimant described in Subsection (1)(b)(i) if:

(A) the claimant claims the dependent under Section 151, Internal Revenue Code, as allowed on the claimant's federal individual income tax return for the taxable year; and

(B) the dependent is insured under the health benefit plan described in Subsection (1)(b)(i).

(c) "Excluded expenses" means an amount a claimant pays for insurance offered under a health benefit plan for a taxable year if:

(i) the claimant claims a tax credit for that amount under Section 35, Internal Revenue Code:

(A) on the claimant's federal individual income tax return for the taxable year; and

(B) with respect to an eligible insured individual;

(ii) the claimant deducts that amount under Section 162 or 213, Internal Revenue Code:

(A) on the claimant's federal individual income tax return for the taxable year; and

(B) with respect to an eligible insured individual; or

(iii) the claimant excludes that amount from gross income under Section 106 or 125, Internal Revenue Code, with respect to an eligible insured individual.

(d) (i) "Health benefit plan" is as defined in Section 31A-1-301.

(ii) "Health benefit plan" does not include equivalent self-insurance as defined by the Insurance Department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(e) "Joint claimant with no dependents" means a husband and wife who:

(i) file a single return jointly under this chapter for the taxable year; and

(ii) do not claim a dependent under Section 151, Internal Revenue Code, on the husband's and wife's federal individual income tax return for the taxable year.

(f) "Single claimant with no dependents" means:

(i) a single individual who:

(A) files a single federal individual income tax return for the taxable year; and

(B) does not claim a dependent under Section 151, Internal Revenue Code, on the single individual's federal individual income tax return for the taxable year;

(ii) a head of household:

(A) as defined in Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for the taxable year; and

(B) who does not claim a dependent under Section 151, Internal Revenue

Code, on the head of household's federal individual income tax return for the taxable year; or

(iii) a married individual who:

(A) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and

(B) does not claim a dependent under Section 151, Internal Revenue Code, on that married individual's federal individual income tax return for the taxable year.

(2) Subject to Subsection (3), and except as provided in Subsection (4), for taxable years beginning on or after January 1, 2009, a claimant may claim a nonrefundable tax credit equal to the product of:

(a) the difference between:

(i) the total amount the claimant pays during the taxable year for:

(A) insurance offered under a health benefit plan; and

(B) an eligible insured individual; and

(ii) excluded expenses; and

(b) 5%.

(3) The maximum amount of a tax credit described in Subsection (2) a claimant may claim on a return for a taxable year is:

(a) for a single claimant with no dependents, \$300;

(b) for a joint claimant with no dependents, \$600; or

(c) for a claimant with dependents, \$900.

(4) A claimant may not claim a tax credit under this section if the claimant is eligible to participate in insurance offered under a health benefit plan maintained and funded in whole or in part by:

(a) the claimant's employer; or

(b) another person's employer.

(5) A claimant may not carry forward or carry back a tax credit under this section.

Enacted by Chapter 389, 2008 General Session

**59-10-1024. Nonrefundable tax credit for qualifying solar projects.**

(1) As used in this section:

(a) "Active solar system" is as defined in Section 59-10-1014.

(b) "Purchaser" means a claimant, estate, or trust that purchases one or more solar units from a qualifying political subdivision.

(c) "Qualifying political subdivision" means:

(i) a city or town in this state;

(ii) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act; or

(iii) a special service district created under Title 17D, Chapter 1, Special Service District Act.

(d) "Qualifying solar project" means the portion of an active solar system:

(i) that a qualifying political subdivision:

(A) constructs;

- (B) controls; or
- (C) owns;
- (ii) with respect to which the qualifying political subdivision described in Subsection (1)(c)(i) sells one or more solar units; and
- (iii) that generates electrical output that is furnished:
  - (A) to one or more residential units; or
  - (B) for the benefit of one or more residential units.
- (e) "Residential unit" is as defined in Section 59-10-1014.
- (f) "Solar unit" means a portion of the electrical output:
  - (i) of a qualifying solar project;
  - (ii) that a qualifying political subdivision sells to a purchaser; and
  - (iii) the purchase of which requires that the purchaser agree to bear a proportionate share of the expense of the qualifying solar project:
    - (A) in accordance with a written agreement between the purchaser and the qualifying political subdivision;
    - (B) in exchange for a credit on the purchaser's electrical bill; and
    - (C) as determined by a formula established by the qualifying political subdivision.
- (2) Subject to Subsection (3), for taxable years beginning on or after January 1, 2009, a purchaser may claim a nonrefundable tax credit equal to the product of:
  - (a) the amount the purchaser pays to purchase one or more solar units during the taxable year; and
  - (b) 25%.
- (3) For a taxable year, a tax credit under this section may not exceed \$2,000 on a return.
- (4) A purchaser may carry forward a tax credit under this section for a period that does not exceed the next four taxable years if:
  - (a) the purchaser is allowed to claim a tax credit under this section for a taxable year; and
  - (b) the amount of the tax credit exceeds the purchaser's tax liability under this chapter for that taxable year.
- (5) Subject to Section 59-10-1014, a tax credit under this section is in addition to any other tax credit allowed by this chapter.
- (6) (a) On or before October 1, 2012, and every five years after October 1, 2012, the Revenue and Taxation Interim Committee shall review the tax credit allowed by this section and report its recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.
- (b) The Revenue and Taxation Interim Committee's report under Subsection (6)(a) shall include information concerning the cost of the tax credit, the purpose and effectiveness of the tax credit, and the state's benefit from the tax credit.

Amended by Chapter 384, 2011 General Session

**59-10-1025. Nonrefundable tax credit for investment in certain life science**

**establishments.**

- (1) As used in this section:
  - (a) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.
  - (b) "Eligible claimant, estate, or trust" is as defined in Section 63M-1-2902.
  - (c) "Life science establishment" means an establishment described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:
    - (i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
    - (ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or
    - (iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.
  - (d) "Office" means the Governor's Office of Economic Development.
  - (e) "Pass-through entity" is as defined in Section 59-10-1402.
  - (f) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.
  - (g) "Qualifying ownership interest" means an ownership interest that is:
    - (i) (A) common stock;
    - (B) preferred stock; or
    - (C) an ownership interest in a pass-through entity;
    - (ii) originally issued to:
      - (A) an eligible claimant, estate, or trust; or
      - (B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit under this section was a pass-through entity taxpayer of the pass-through entity on the day on which the qualifying ownership interest was issued and remains a pass-through entity taxpayer of the pass-through entity until the last day of the taxable year for which the eligible claimant, estate, or trust claims a tax credit under this section; and
    - (iii) issued:
      - (A) by a Utah small business corporation;
      - (B) on or after January 1, 2011; and
      - (C) for money or other property, except for stock or securities.
  - (h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation" is as defined in Section 59-10-1022.
  - (ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a pass-through entity.
- (2) Subject to the other provisions of this section, for a taxable year beginning on or after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate issued to the eligible claimant, estate, or trust in accordance with Section 63M-1-2908 for that taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase price of a qualifying ownership interest in a Utah small business corporation by the claimant, estate, or trust if:
  - (a) the qualifying ownership interest is issued by a Utah small business corporation that is a life science establishment;
  - (b) the qualifying ownership interest in the Utah small business corporation is purchased for at least \$25,000;

(c) the eligible claimant, estate, or trust owned less than 30% of the qualifying ownership interest of the Utah small business corporation at the time of the purchase of the qualifying ownership interest; and

(d) on each day of the taxable year of the purchase of the qualifying ownership interest, the Utah small business corporation described in Subsection (2)(a) has at least 50% of its employees in the state.

(3) Subject to Subsection (4), the tax credit under Subsection (2):

(a) may only be claimed by the eligible claimant, estate, or trust:

(i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit certificate issued in accordance with Section 63M-1-2908; and

(ii) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (3)(a)(i), for a period of three taxable years as follows:

(A) the tax credit in the taxable year of the purchase of the qualifying ownership interest may not exceed 10% of the purchase price of the qualifying ownership interest;

(B) the tax credit in the taxable year after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 10% of the purchase price of the qualifying ownership interest; and

(C) the tax credit in the taxable year two years after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 15% of the purchase price of the qualifying ownership interest; and

(b) may not exceed the lesser of:

(i) the amount listed on the tax credit certificate issued in accordance with Section 63M-1-2908; or

(ii) \$350,000 in a taxable year.

(4) An eligible claimant, estate, or trust may not claim a tax credit under this section for a taxable year if the eligible claimant, estate, or trust:

(a) has sold any of the qualifying ownership interest during the taxable year; or

(b) does not hold a tax credit certificate for that taxable year that is issued to the eligible claimant, estate, or trust by the office in accordance with Section 63M-1-2908.

(5) If a Utah small business corporation in which an eligible claimant, estate, or trust purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the eligible claimant, estate, or trust may not claim both the tax credit provided in this section and a capital loss on the qualifying ownership interest.

(6) If an eligible claimant is a pass-through entity taxpayer that files a return under Chapter 7, Corporate Franchise and Income Taxes, the eligible claimant may claim the tax credit under this section on the return filed under Chapter 7, Corporate Franchise and Income Taxes.

(7) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

Amended by Chapter 423, 2012 General Session

**59-10-1027. Nonrefundable tax credit for combat related death.**

(1) As used in this section:

(a) "Active component of the United States Armed Forces" means active duty

service in the United States Army, United States Navy, United States Air Force, United States Marine Corps, or United States Coast Guard.

(b) "Combat related death" means an individual who dies:

(i) on or after January 1, 2010; and

(ii) (A) while in military service in a combat zone; or

(B) as a result of a wound, disease, or injury the individual incurs while in military service in a combat zone.

(c) "Combat zone" means an area that the President of the United States designates by Executive Order as an area in which an active component of the United States Armed Forces or a reserve component of the United States Armed Forces are or have engaged in combat.

(d) "Military service in a combat zone" means service:

(i) in an active component of the United States Armed Forces or reserve component of the United States Armed Forces; and

(ii) performed:

(A) on or after the date the President of the United States designates by Executive Order as the date combatant activities begin in a combat zone; and

(B) on or before the date the President of the United States designates by Executive Order as the date combatant activities terminate in a combat zone.

(e) "Reserve component of the United States Armed Forces" means service in a reserve component of the armed forces listed in 10 U.S.C. Sec. 101(c) or 10 U.S.C. Sec. 10101.

(2) A claimant, estate, or trust that files a return on behalf of an individual who dies a combat related death may claim a nonrefundable tax credit against that individual's tax liability under this chapter as provided in this section.

(3) For purposes of Subsection (2), the tax credit is equal to the tax liability of the individual who dies a combat related death for the taxable year during which the individual dies.

Enacted by Chapter 254, 2011 General Session

**59-10-1028. Nonrefundable tax credit for capital gain transactions on the exchange of one form of legal tender for another form of legal tender.**

(1) As used in this section:

(a) "Capital gain transaction" means a transaction that results in a:

(i) short-term capital gain; or

(ii) long-term capital gain.

(b) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(c) "Long-term capital loss" is as defined in Section 1222, Internal Revenue Code.

(d) "Net capital gain" means the amount by which the sum of long-term capital gains and short-term capital gains on a claimant's, estate's, or trust's transactions from exchanges made for a taxable year of one form of legal tender for another form of legal tender exceeds the sum of long-term capital losses and short-term capital losses on

those transactions for that taxable year.

(e) "Short-term capital loss" is as defined in Section 1222, Internal Revenue Code.

(f) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(2) Except as provided in Section 59-10-1002.2, for taxable years beginning on or after January 1, 2012, a claimant, estate, or trust may claim a nonrefundable tax credit equal to the product of:

(a) to the extent a net capital gain is included in taxable income, the amount of the claimant's, estate's, or trust's net capital gain on capital gain transactions from exchanges made on or after January 1, 2012, for a taxable year, of one form of legal tender for another form of legal tender; and

(b) 5%.

(3) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to implement this section.

Amended by Chapter 399, 2012 General Session

**59-10-1029. Nonrefundable alternative energy development tax credit.**

(1) As used in this section:

(a) "Alternative energy entity" is as defined in Section 63M-4-502.

(b) "Alternative energy project" is as defined in Section 63M-4-502.

(c) "Office" is as defined in Section 63M-4-401.

(2) Subject to the other provisions of this section, an alternative energy entity may claim a nonrefundable tax credit for alternative energy development as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63M, Chapter 4, Part 5, Alternative Energy Development Tax Credit Act, to the alternative energy entity for the taxable year.

(4) An alternative energy entity may carry forward a tax credit under this section for a period that does not exceed the next seven taxable years if:

(a) the alternative energy entity is allowed to claim a tax credit under this section for a taxable year; and

(b) the amount of the tax credit exceeds the alternative energy entity's tax liability under this chapter for that taxable year.

(5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:

(i) the amount of tax credit that the office grants to each alternative energy entity



for each taxable year;

- (ii) the new state revenues generated by each alternative energy project;
- (iii) the information contained in the office's latest report to the Legislature under Section 63M-4-505; and

- (iv) any other information that the Revenue and Taxation Interim Committee requests.

(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

- (i) the cost of the tax credit to the state;
- (ii) the purpose and effectiveness of the tax credit; and
- (iii) the extent to which the state benefits from the tax credit.

Enacted by Chapter 410, 2012 General Session

**59-10-1030. Nonrefundable alternative energy manufacturing tax credit.**

(1) As used in this section:

- (a) "Alternative energy entity" is as defined in Section 63M-1-3102.

- (b) "Alternative energy manufacturing project" is as defined in Section 63M-1-3102.

- (c) "Office" means the Governor's Office of Economic Development.

(2) Subject to the other provisions of this section, an alternative energy entity may claim a nonrefundable tax credit for alternative energy manufacturing as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63M, Chapter 1, Part 31, Alternative Energy Manufacturing Tax Credit Act, to the alternative energy entity for the taxable year.

(4) An alternative energy entity may carry forward a tax credit under this section for a period that does not exceed the next seven taxable years if:

- (a) the alternative energy entity is allowed to claim a tax credit under this section for a taxable year; and

- (b) the amount of the tax credit exceeds the alternative energy entity's tax liability under this chapter for that taxable year.

(5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:

- (i) the amount of tax credit that the office grants to each alternative energy entity for each taxable year;

- (ii) the new state revenues generated by each alternative energy manufacturing project;

- (iii) the information contained in the office's latest report to the Legislature under Section 63M-1-3105; and

(iv) any other information that the Revenue and Taxation Interim Committee requests.

(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

- (i) the cost of the tax credit to the state;
- (ii) the purpose and effectiveness of the tax credit; and
- (iii) the extent to which the state benefits from the tax credit.

Enacted by Chapter 410, 2012 General Session

**59-10-1031. Nonrefundable tax credit for employing a recently deployed veteran.**

(1) As used in this section, "recently deployed veteran" means an individual who:

- (a) was mobilized to active federal military service in:
  - (i) an active component of the United States Armed Forces as defined in Section 59-10-1027; or
  - (ii) a reserve component of the United States Armed Forces as defined in Section 59-10-1027; and
- (b) received an honorable or general discharge from active federal military service under Subsection (1)(a) within the two-year period before the date the employment begins.

(2) A claimant, estate, or trust may claim a nonrefundable tax credit as provided in this section against a tax under this chapter if the claimant, estate, or trust employs a recently deployed veteran, on or after January 1, 2012, who:

- (a) (i) is collecting or is eligible to collect unemployment benefits under Title 35A, Chapter 4, Part 4, Benefits and Eligibility; or
- (ii) within the last two years, has exhausted the unemployment benefits under Subsection (2)(a)(i); and
- (b) works for the claimant, estate, or trust at least 35 hours per week for not less than 45 of the 52 weeks following the recently deployed veteran's start date for the employment.

(3) A tax credit:

- (a) earned under this section shall be claimed beginning in the year the requirements of Subsection (2) are met;
- (b) for the first taxable year, is equal to \$200 for each month of employment not to exceed \$2,400 for the taxable year for each recently deployed veteran; and
- (c) for the second taxable year, is equal to \$400 for each month of employment not to exceed \$4,800 for the taxable year for each recently deployed veteran.

(4) A claimant, estate, or trust that claims a tax credit under this section shall retain the following for each recently deployed veteran for which a tax credit is claimed under this section:

- (a) the recently deployed veteran's:
  - (i) name;
  - (ii) taxpayer identification number;

- (iii) last known address;
  - (iv) start date of the employment; and
  - (v) documentation establishing that the recently deployed veteran was employed as required under Subsection (2)(b);
  - (b) documentation provided by the recently deployed veteran's military service unit establishing that the recently deployed veteran is a recently deployed veteran; and
  - (c) a signed statement from the Department of Workforce Services that the recently deployed veteran meets the requirements of Subsection (2)(a) regarding unemployment benefits.
- (5) At the request of the commission, a claimant, estate, or trust shall provide the information described in Subsection (4) to the commission.
- (6) A claimant, estate, or trust may carry forward a tax credit under this section for a period that does not exceed the next five taxable years if:
- (a) the claimant, estate, or trust is allowed to claim a tax credit under this section for a taxable year; and
  - (b) the amount of the tax credit exceeds the claimant, estate, or trust's tax liability under this chapter for that taxable year.

Enacted by Chapter 306, 2012 General Session

**59-10-1101. Title.**

This part is known as the "Refundable Tax Credit Act."

Enacted by Chapter 223, 2006 General Session

**59-10-1102. Definitions.**

As used in this part:

- (1) (a) Except as provided in Subsection (1)(b) or Subsection 59-10-1103(1)(a), "claimant" means a resident or nonresident person.
- (b) "Claimant" does not include an estate or trust.
- (2) Except as provided in Subsection 59-10-1103(1)(a), "estate" means a nonresident estate or a resident estate.
- (3) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may claim:
  - (a) as provided by statute; and
  - (b) regardless of whether the claimant, estate, or trust has a tax liability under this chapter for a taxable year.
- (4) Except as provided in Subsection 59-10-1103(1)(a), "trust" means a nonresident trust or a resident trust.

Enacted by Chapter 223, 2006 General Session

**59-10-1103. Tax credit for pass-through entity taxpayer.**

- (1) As used in this section:
  - (a) "Pass-through entity" is as defined in Section 59-10-1402.

(b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(2) A pass-through entity taxpayer may claim a refundable tax credit against the tax otherwise due under this chapter if that pass-through entity taxpayer is a:

- (a) claimant;
- (b) estate; or
- (c) trust.

(3) The tax credit described in Subsection (2) is equal to the amount paid or withheld by the pass-through entity on behalf of the pass-through entity taxpayer described in Subsection (2) in accordance with Section 59-10-1403.2.

(4) A pass-through entity taxpayer may not claim a tax credit under this section for an amount for which the pass-through entity taxpayer claims a tax credit under Section 59-7-614.4.

Amended by Chapter 312, 2009 General Session

**59-10-1104. Tax credit for adoption of a child who has a special need.**

(1) As used in this section, a "child who has a special need" means a child who meets at least one of the following conditions:

- (a) the child is five years of age or older;
- (b) the child:
  - (i) is under the age of 18; and
  - (ii) has a physical, emotional, or mental disability; or
- (c) the child is a member of a sibling group placed together for adoption.

(2) (a) Subject to the other provisions of this section, a claimant who adopts a child who has a special need may claim a refundable tax credit of \$1,000:

- (i) for a child who has a special need who the claimant adopts;
- (ii) on the claimant's individual income tax return for the taxable year; and
- (iii) against taxes otherwise due under this chapter.

(b) A tax credit under this section may not exceed \$1,000 per return for a taxable year.

(3) For a claimant to qualify for the tax credit described in Subsection (2) for an adoption:

(a) the order that grants the adoption shall be issued:

- (i) on or after January 1, 2013; and
- (ii) by:

- (A) a court of competent jurisdiction of this state or another state; or
- (B) a foreign country;

(b) the claimant shall be a resident of this state on the date the order described in Subsection (3)(a) is issued; and

(c) for an adoption made by a foreign country, the adoption shall be registered in accordance with Section 78B-6-142.

(4) (a) For an adoption for which a court of competent jurisdiction of this state or another state issues the order described in Subsection (3)(a), a claimant may claim a tax credit for the taxable year for which the adoption order becomes final.

(b) For an adoption for which a foreign country issues the order described in

Subsection (3)(a), a claimant may claim a tax credit for the taxable year for which a court of competent jurisdiction in this state orders the state registrar to file the adoption order issued by the foreign country.

(5) The credit provided for in this section may not be carried forward or carried back.

(6) Nothing in this section shall affect the ability of any claimant who adopts a child who has a special need to receive adoption assistance under Section 62A-4a-907.

Amended by Chapter 414, 2013 General Session

**59-10-1105. Tax credit for hand tools used in farming operations -- Procedures for refund -- Transfers from General Fund to Education Fund -- Rulemaking authority.**

(1) For taxable years beginning on or after January 1, 2004, a claimant, estate, or trust may claim a refundable tax credit:

- (a) as provided in this section;
- (b) against taxes otherwise due under this chapter; and
- (c) in an amount equal to the amount of tax the claimant, estate, or trust pays:
  - (i) on a purchase of a hand tool:
    - (A) if the purchase is made on or after July 1, 2004;
    - (B) if the hand tool is used or consumed primarily and directly in a farming operation in the state; and
    - (C) if the unit purchase price of the hand tool is more than \$250; and
  - (ii) under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection (1)(c)(i).

(2) A claimant, estate, or trust:

(a) shall retain the following to establish the amount of tax the claimant, estate, or trust paid under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection (1)(c)(i):

- (i) a receipt;
  - (ii) an invoice; or
  - (iii) a document similar to a document described in Subsection (2)(a)(i) or (ii);
- and

(b) may not carry forward or carry back a tax credit under this section.

(3) (a) In accordance with any rules prescribed by the commission under Subsection (3)(b), the commission shall:

(i) make a refund to a claimant, estate, or trust that claims a tax credit under this section if the amount of the tax credit exceeds the claimant's, estate's, or trust's tax liability under this chapter; and

(ii) transfer at least annually from the General Fund into the Education Fund an amount equal to the amount of tax credit claimed under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making:

- (i) a refund to a claimant, estate, or trust as required by Subsection (3)(a)(i); or

(ii) transfers from the General Fund into the Education Fund as required by Subsection (3)(a)(ii).

Amended by Chapter 382, 2008 General Session

**59-10-1106. Refundable renewable energy tax credit.**

(1) As used in this section:

(a) "Active solar system" is as defined in Section 59-10-1014.

(b) "Biomass system" is as defined in Section 59-10-1014.

(c) "Business entity" is as defined in Section 59-10-1014.

(d) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise.

(e) "Commercial enterprise" means a business entity that:

(i) is a claimant, estate, or trust; and

(ii) has the purpose of producing electrical, mechanical, or thermal energy for sale from a commercial energy system.

(f) (i) "Commercial unit" means any building or structure that a business entity that is a claimant, estate, or trust uses to transact its business.

(ii) Notwithstanding Subsection (1)(f)(i):

(A) in the case of an active solar system used for agricultural water pumping or a wind system, each individual energy generating device shall be a commercial unit; and

(B) if an energy system is the building or structure that a business entity that is a claimant, estate, or trust uses to transact its business, a commercial unit is the complete energy system itself.

(g) "Direct-use geothermal system" is as defined in Section 59-10-1014.

(h) "Geothermal electricity" is as defined in Section 59-10-1014.

(i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.

(j) "Hydroenergy system" is as defined in Section 59-10-1014.

(k) "Office" means the Office of Energy Development created in Section 63M-4-401.

(l) "Passive solar system" is as defined in Section 59-10-1014.

(m) "Wind system" is as defined in Section 59-10-1014.

(2) (a) (i) A business entity that is a claimant, estate, or trust that purchases or participates in the financing of a commercial energy system situated in Utah is entitled to a refundable tax credit as provided in this Subsection (2)(a) if the commercial energy system does not use wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or more kilowatts of electricity and:

(A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity that is a claimant, estate, or trust; or

(B) the business entity that is a claimant, estate, or trust sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(ii) (A) A business entity that is a claimant, estate, or trust is entitled to a tax credit of up to 10% of the reasonable costs of any commercial energy system installed, including installation costs, against any tax due under this chapter for the taxable year in which the commercial energy system is completed and placed in service.

(B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this Subsection (2)(a) may not exceed \$50,000 per commercial unit.

(C) The credit under this Subsection (2)(a) is allowed for any commercial energy system completed and placed in service on or after January 1, 2007.

(iii) A business entity that is a claimant, estate, or trust that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(a) if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(iv) Only the principal recovery portion of the lease payments, which is the cost incurred by a business entity that is a claimant, estate, or trust in acquiring a commercial energy system, excluding interest charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(a).

(v) A business entity that is a claimant, estate, or trust that leases a commercial energy system is eligible to use the tax credit under this Subsection (2)(a) for a period no greater than seven years from the initiation of the lease.

(b) (i) A business entity that is a claimant, estate, or trust that owns a commercial energy system situated in Utah using wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or more kilowatts of electricity is entitled to a refundable tax credit as provided in this section if:

(A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity that is a claimant, estate, or trust; or

(B) the business entity that is a claimant, estate, or trust sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(ii) A business entity that is a claimant, estate, or trust is entitled to a tax credit under this Subsection (2)(b) equal to the product of:

(A) 0.35 cents; and

(B) the kilowatt hours of electricity produced and either used or sold during the taxable year.

(iii) The credit allowed by this Subsection (2)(b):

(A) may be claimed for production occurring during a period of 48 months beginning with the month in which the commercial energy system is placed in service; and

(B) may not be carried forward or back.

(iv) A business entity that is a claimant, estate, or trust that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this section if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(3) The tax credits provided for under this section are in addition to any tax credits provided under the laws or rules and regulations of the United States.

(4) (a) The office may set standards for commercial energy systems claiming a

tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(b) A tax credit may not be taken under this section until the office has certified that the commercial energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(5) The office and the commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.

(6) (a) On or before October 1, 2012, and every five years thereafter, the Revenue and Taxation Interim Committee shall review each tax credit provided by this section and report its recommendations to the Legislative Management Committee concerning whether the credit should be continued, modified, or repealed.

(b) The Revenue and Taxation Interim Committee's report under Subsection (6)(a) shall include information concerning the cost of the credit, the purpose and effectiveness of the credit, and the state's benefit from the credit.

Amended by Chapter 37, 2012 General Session

**59-10-1107. Refundable economic development tax credit.**

(1) As used in this section:

(a) "Business entity" means a claimant, estate, or trust that meets the definition of "business entity" as defined in Section 63M-1-2403.

(b) "Office" means the Governor's Office of Economic Development.

(2) Subject to the other provisions of this section, a business entity may claim a refundable tax credit for economic development.

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the business entity for the taxable year.

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a business entity that claims a tax credit under this section if the amount of the tax credit exceeds the business entity's tax liability for a taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a business entity as required by Subsection (4)(a).

(5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:

(i) the amount of tax credit the office grants to each taxpayer for each calendar year;



- (ii) the criteria the office uses in granting a tax credit;
  - (iii) the new state revenues generated by each taxpayer for each calendar year;
  - (iv) the information contained in the office's latest report to the Legislature under Section 63M-1-2406; and
  - (v) any other information that the Revenue and Taxation Interim Committee requests.
- (c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:
- (i) the cost of the tax credit to the state;
  - (ii) the purpose and effectiveness of the tax credit; and
  - (iii) the extent to which the state benefits from the tax credit.

Amended by Chapter 246, 2012 General Session

Amended by Chapter 410, 2012 General Session

**59-10-1108. Refundable motion picture tax credit.**

- (1) As used in this section:
- (a) "Motion picture company" means a claimant, estate, or trust that meets the definition of a motion picture company under Section 63M-1-1802.
  - (b) "Office" means the Governor's Office of Economic Development.
  - (c) "State-approved production" has the same meaning as defined in Section 63M-1-1802.
- (2) For taxable years beginning on or after January 1, 2009, a motion picture company may claim a refundable tax credit for a state-approved production.
- (3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to a motion picture company under Section 63M-1-1803 for the taxable year.
- (4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a motion picture company that claims a tax credit under this section if the amount of the tax credit exceeds the motion picture company's tax liability for the taxable year.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a motion picture company as required by Subsection (4)(a).
- (5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.
- (b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:
- (i) the amount of tax credit the office grants to each taxpayer for each calendar year;
  - (ii) the criteria the office uses in granting a tax credit;
  - (iii) the dollars left in the state, as defined in Section 63M-1-1802, by each motion picture company for each calendar year;

(iv) the information contained in the office's latest report to the Legislature under Section 63M-1-1805; and

(v) any other information requested by the Revenue and Taxation Interim Committee.

(c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

- (i) the cost of the tax credit to the state;
- (ii) the effectiveness of the tax credit; and
- (iii) the extent to which the state benefits from the tax credit.

Amended by Chapter 246, 2012 General Session

**59-10-1109. Refundable tax credit for certain business entities generating state tax revenue increases.**

(1) As used in this section:

- (a) "Eligible business entity" is as defined in Section 63M-1-2902.
- (b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.
- (c) "Office" means the Governor's Office of Economic Development.
- (d) "Pass-through entity" is as defined in Section 59-10-1402.
- (e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.
- (f) "Qualifying agreement" is as defined in Section 59-7-614.6.

(2) Subject to the other provisions of this section, an eligible business entity may:

- (a) claim a refundable tax credit as provided in Subsection (3); or
- (b) if the eligible business entity is a pass-through entity, pass through to one or more pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) (a) Except as provided in Subsection (3)(b), the amount of the tax credit is:  
(i) for an eligible business entity, an amount up to the amount listed on the tax credit certificate that the office issues to the eligible business entity for the taxable year in accordance with Section 63M-1-2908; or

(ii) for a pass-through entity taxpayer, an amount up to the amount of a tax credit that an eligible business entity passes through to the pass-through entity taxpayer of the pass-through entity in accordance with Subsection (2)(b) or Subsection 59-7-614.6(2)(b).

(b) Subject to Subsection (3)(c), a tax credit under this section may not exceed the amount of eligible new state tax revenues generated by an eligible business entity for the taxable year for which the eligible business entity claims a tax credit under this section.

(c) A tax credit under this section for an eligible business entity that enters into a qualifying agreement may not exceed:

- (i) for the taxable year in which the eligible business entity first generates eligible new state tax revenues and the two following years, the amount of eligible new

state tax revenues generated by the eligible business entity; and

(ii) for the seven taxable years following the last of the three taxable years described in Subsection (3)(c)(i), 75% of the amount of eligible new state tax revenues generated by the eligible business entity.

(4) An eligible business entity or pass-through entity taxpayer to which an eligible business entity passes through a tax credit in accordance with Subsection (2)(b) or Subsection 59-7-614.6(2)(b) may only claim or pass through a tax credit under this section for a taxable year for which the eligible business entity holds a tax credit certificate issued in accordance with Section 63M-1-2908.

(5) An eligible business entity or a pass-through entity taxpayer may not:

(a) carry forward or carry back a tax credit under this section; or

(b) claim a tax credit under both this section and Section 59-7-614.6.

Amended by Chapter 423, 2012 General Session

**59-10-1301. Title.**

This part is known as the "Individual Income Tax Contribution Act."

Enacted by Chapter 389, 2008 General Session

**59-10-1302. Definitions.**

As used in this part, "contribution" means a contribution a resident or nonresident individual makes on an individual income tax return as allowed by this part.

Enacted by Chapter 389, 2008 General Session

**59-10-1303. Contributions -- Amount -- Procedure for designating a contribution -- Joint return -- Contribution irrevocable.**

(1) A resident or nonresident individual that makes a contribution under this part, other than Section 59-10-1311 or Section 59-10-1313, may designate as the contribution any whole dollar amount of \$1 or more.

(2) If a resident or nonresident individual designating a contribution under this part other than Section 59-10-1311:

(a) is owed an individual income tax refund for the taxable year, the amount of the contribution under this part shall be deducted from the resident or nonresident individual's individual income tax refund; or

(b) is not owed an individual income tax refund for the taxable year, the resident or nonresident individual may remit a contribution under this part with the resident or nonresident individual's individual income tax return, except as provided in Section 59-10-1313.

(3) If a husband and wife file a single individual income tax return jointly, a contribution under this part, other than Section 59-10-1311, shall be a joint contribution.

(4) Except as provided in Subsection 59-10-1313(3)(c), a contribution under this part is irrevocable for the taxable year for which the resident or nonresident individual makes the contribution.

Amended by Chapter 251, 2009 General Session

**59-10-1304. Removal of designation and prohibitions on collection for certain contributions on income tax return -- Conditions for removal and prohibitions on collection -- Commission reporting requirements.**

(1) (a) If a contribution or combination of contributions described in Subsection (1)(b) generate less than \$30,000 per year for three consecutive years, the commission shall remove the designation for the contribution from the individual income tax return and may not collect the contribution from a resident or nonresident individual beginning two taxable years after the three-year period for which the contribution generates less than \$30,000 per year.

(b) The following contributions apply to Subsection (1)(a):

- (i) the contribution provided for in Section 59-10-1305;
- (ii) the contribution provided for in Section 59-10-1306;
- (iii) the sum of the contributions provided for in Subsection 59-10-1307(1);
- (iv) the contribution provided for in Section 59-10-1308;
- (v) the contribution provided for in Section 59-10-1310;
- (vi) the contribution provided for in Section 59-10-1315;
- (vii) the sum of the contributions provided for in:
  - (A) Section 59-10-1316; and
  - (B) Section 59-10-1317; or
- (viii) the contribution provided for in Section 59-10-1318.

(2) If the commission removes the designation for a contribution under Subsection (1), the commission shall report to the Revenue and Taxation Interim Committee that the commission removed the designation on or before the November interim meeting of the year in which the commission determines to remove the designation.

Amended by Chapter 235, 2013 General Session

Amended by Chapter 338, 2013 General Session

**59-10-1305. Nongame wildlife contribution -- Credit to Wildlife Resources Account.**

(1) As used in this section, "nongame wildlife" means wildlife species that are:

- (a) (i) protected;
- (ii) endangered; or
- (iii) threatened with extinction;
- (b) under the jurisdiction of the Division of Wildlife Resources, including:
  - (i) aquatic wildlife;
  - (ii) a crustacean;
  - (iii) an invertebrate;
  - (iv) a mollusk; or
  - (v) specialized habitat wildlife, including an aquatic or terrestrial type of specialized habitat wildlife;

- (c) not commonly pursued, killed, or consumed for sport or profit; and
- (d) not nuisance predators presently being brought under control by the state.
- (2) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this part to preserve, protect, perpetuate, and enhance nongame wildlife resources of the state through preservation of a satisfactory environment and an ecological balance.
- (3) The commission shall:
  - (a) determine annually the total amount of contributions designated in accordance with this section; and
  - (b) credit the amount described in Subsection (3)(a) to the Wildlife Resources Account in accordance with Section 23-14-13.

Renumbered and Amended by Chapter 389, 2008 General Session

**59-10-1306. Homeless contribution -- Credit to Pamela Atkinson Homeless Account.**

- (1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution to the Pamela Atkinson Homeless Account as provided in this part.
- (2) The commission shall:
  - (a) determine annually the total amount of contributions designated in accordance with this section; and
  - (b) credit the amount described in Subsection (2)(a) to the Pamela Atkinson Homeless Account created by Section 35A-8-603.

Amended by Chapter 212, 2012 General Session

**59-10-1307. Contributions for education.**

- (1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this part to:
  - (a) the foundation of any school district if that foundation is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or
  - (b) a school district described in Title 53A, Chapter 2, School Districts, if the school district has not established a foundation.
- (2) If a resident or nonresident individual designates an amount as a contribution under:
  - (a) Subsection (1)(a), but does not designate a particular school district foundation to receive the contribution, the contribution shall be made to the Utah State Office of Education to be distributed to one or more associations of foundations:
    - (i) if those foundations that are members of the association are established in

accordance with Section 53A-4-205; and

(ii) as determined by the Utah State Office of Education; or

(b) Subsection (1)(b), but does not designate a particular school district to receive the contribution, the contribution shall be made to the Utah State Office of Education.

(3) The commission shall:

(a) determine annually the total amount of contributions designated to each entity described in Subsection (1) in accordance with this section; and

(b) subject to Subsection (2), credit the amounts described in Subsection (1) to the entities.

Amended by Chapter 17, 2009 General Session

**59-10-1308. Children's organ transplants contribution -- Credit to Kurt Oscarson Children's Organ Transplant Account.**

(1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution to the Kurt Oscarson Children's Organ Transplant Account created by Section 26-18a-4.

(2) The commission shall:

(a) determine annually the total amount of contributions designated in accordance with this section; and

(b) credit the amount described in Subsection (2)(a) to the Kurt Oscarson Children's Organ Transplant Account created by Section 26-18a-4.

Amended by Chapter 278, 2010 General Session

**59-10-1310. Contribution to Cat and Dog Community Spay and Neuter Program Restricted Account.**

(1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

(a) deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account created by Section 4-40-102; and

(b) distributed by the Department of Health as provided in Section 4-40-102.

(2) The commission shall:

(a) determine annually the total amount of contributions designated in accordance with this section; and

(b) credit the amount described in Subsection (2)(a) to the Cat and Dog Community Spay and Neuter Program Restricted Account created by Section 4-40-102.

Amended by Chapter 369, 2012 General Session

**59-10-1311. Election Campaign Fund contribution -- Transfer from General**

### **Fund -- Form and procedure.**

(1) (a) A resident or nonresident individual, other than a nonresident alien, may designate on the resident or nonresident individual's individual income tax return a contribution of \$2 to the Election Campaign Fund created by Section 59-10-1312, if the resident or nonresident individual:

- (i) has a liability under this chapter for a taxable year of \$2 or more; and
- (ii) files a return under this chapter.

(b) The commission shall transfer \$2 from the General Fund to the Election Campaign Fund for each contribution made on an individual income tax return under this Subsection (1).

(c) The transfer described in Subsection (1)(b) shall be made from revenue generated from state sales and use tax revenues collected in accordance with Chapter 12, Sales and Use Tax Act.

(2) (a) A contribution under Subsection (1) may be made with respect to any taxable year at the time a resident or nonresident individual files a return for that taxable year.

(b) The commission shall include the contribution allowed by this section:

- (i) on a return under this chapter; and
- (ii) for any political party as defined by Section 20A-1-102 that has qualified as a political party in the first six months of the calendar year for which the return is prepared.

(c) The commission shall place a political party described in Subsection (2)(b) on a return described in Subsection (2)(b) in alphabetical order.

(d) The commission shall include on a return described in Subsection (2)(b):

- (i) the option for a resident or nonresident individual to indicate that no contribution is to be made to any political party; and
- (ii) a statement that a contribution a resident or nonresident individual, other than a nonresident alien, makes under this section may not:

(A) increase the resident or nonresident individual's tax liability under this chapter; or

(B) reduce the resident or nonresident individual's refund under this chapter.

Renumbered and Amended by Chapter 389, 2008 General Session

### **59-10-1312. Election Campaign Fund -- Creation -- Funding for account -- Disbursement and distribution -- State treasurer requirement to provide a list of contributions designated to each political party.**

(1) (a) As used in this section, "fund" means the Election Campaign Fund created by this section.

(b) There is created an agency fund known as the "Election Campaign Fund."

(c) The fund shall consist of all amounts deposited to the fund in accordance with Section 59-10-1311.

(2) On or before four months after the due date for filing a return required by this chapter in which a contribution is made in accordance with Section 59-10-1311, the state treasurer shall:

(a) disburse that portion of the amounts deposited in the fund since the last disbursement:

(i) that are designated for a political party; and

(ii) to the political party to which the amounts are designated; and

(b) provide to the political party described in Subsection (2)(a)(ii) a list disclosing, for each county, the total amount designated by resident or nonresident individuals, other than nonresident aliens, in that county.

Renumbered and Amended by Chapter 389, 2008 General Session

**59-10-1313. Contribution to a Utah Educational Savings Plan account.**

(1) (a) If a resident or nonresident individual is owed an individual income tax refund for the taxable year, the individual may designate on the resident or nonresident individual's income tax return a contribution to a Utah Educational Savings Plan account established under Title 53B, Chapter 8a, Utah Educational Savings Plan, in the amount of the entire individual income tax refund.

(b) If a resident or nonresident individual is not owed an individual income tax refund for the taxable year, the individual may not designate on the resident or nonresident's individual income tax return a contribution to a Utah Educational Savings Plan account.

(2) (a) The commission shall send the contribution to the Utah Educational Savings Plan along with the following information:

(i) the amount of the individual income tax refund; and

(ii) the taxpayer's:

(A) name;

(B) Social Security number or taxpayer identification number; and

(C) address.

(b) The commission shall provide the taxpayer's telephone number and number of dependents claimed, as requested, to the Utah Educational Savings Plan.

(c) If a contribution to a Utah Educational Savings Plan account is designated in a single individual income tax return filed jointly by a husband and wife, the commission shall send the information described under Subsection (2)(a) or (b) for both the husband and wife to the Utah Educational Savings Plan.

(3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah Educational Savings Plan shall deposit the contribution into the account.

(b) If the taxpayer owns more than one Utah Educational Savings Plan account, the Utah Educational Savings Plan shall allocate the contribution among the accounts in equal amounts.

(c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah Educational Savings Plan shall send the taxpayer an account agreement.

(ii) If the taxpayer does not sign and return the account agreement by the date specified by the Utah Educational Savings Plan, the Utah Educational Savings Plan shall return the contribution to the taxpayer without any interest or earnings.

(4) For the purpose of determining interest on an overpayment or refund under Section 59-1-402, no interest accrues after the commission sends the contribution to



the Utah Educational Savings Plan.

Amended by Chapter 46, 2011 General Session

**59-10-1314. Contribution to Methamphetamine Housing Reconstruction and Rehabilitation Account.**

(1) For a taxable year beginning on or after January 1, 2010, but beginning on or before December 31, 2012, only, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

(a) deposited into the Methamphetamine Housing Reconstruction and Rehabilitation Account created in Section 35A-8-1103; and

(b) expended for the purposes described in Section 35A-8-1103.

(2) The commission shall:

(a) determine the total amount of contributions designated in accordance with this section for the taxable year described in Subsection (1); and

(b) credit the amount described in Subsection (2)(a) to the Methamphetamine Housing Reconstruction and Rehabilitation Account created in Section 35A-8-1103.

Amended by Chapter 212, 2012 General Session

**59-10-1315. Contribution to Canine Body Armor Restricted Account.**

(1) Except as provided in Section 59-10-1304, for a taxable year beginning on or after January 1, 2011, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

(a) deposited into the Canine Body Armor Restricted Account created in Section 53-16-201; and

(b) expended as provided in Title 53, Chapter 16, Canine Body Armor Restricted Account Act.

(2) The commission shall:

(a) determine the total amount of contributions designated in accordance with this section for a taxable year; and

(b) credit the amount described in Subsection (2)(a) to the Canine Body Armor Restricted Account created in Section 53-16-201.

Enacted by Chapter 294, 2011 General Session

**59-10-1316. Contribution to Youth Development Organization Restricted Account.**

(1) Except as provided in Section 59-10-1304, for a taxable year beginning on or after January 1, 2013, a resident or nonresident individual who files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:

- (a) deposited into the Youth Development Organization Restricted Account created in Section 35A-8-1903; and
  - (b) expended as provided in Title 35A, Chapter 8, Part 19, Youth Development Organization Restricted Account Act.
- (2) The commission shall:
- (a) determine the total amount of contributions designated in accordance with this section for a taxable year; and
  - (b) credit the amount described in Subsection (2)(a) to the Youth Development Organization Restricted Account.

Enacted by Chapter 338, 2013 General Session

**59-10-1317. Contribution to Youth Character Organization Restricted Account.**

- (1) Except as provided in Section 59-10-1304, for a taxable year beginning on or after January 1, 2013, a resident or nonresident individual who files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:
- (a) deposited into the Youth Character Organization Restricted Account created in Section 35A-8-2003; and
  - (b) expended as provided in Title 35A, Chapter 8, Part 20, Youth Character Organization Restricted Account Act.
- (2) The commission shall:
- (a) determine the total amount of contributions designated in accordance with this section for a taxable year; and
  - (b) credit the amount described in Subsection (2)(a) to the Youth Character Organization Restricted Account.

Enacted by Chapter 338, 2013 General Session

**59-10-1318. Contribution to Invest More for Education Account.**

- (1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution as provided in this section to be:
- (a) deposited into the Invest More for Education Account; and
  - (b) expended as provided in Subsection 53A-16-101(4).
- (2) The commission shall:
- (a) determine the total amount of contributions designated in accordance with this section for a taxable year; and
  - (b) credit the amount described in Subsection (2)(a) to the Invest More for Education Account created in Subsection 53A-16-101(4).

Enacted by Chapter 235, 2013 General Session

**59-10-1401. Title.**

This part is known as the "Pass-Through Entities and Pass-Through Entity Taxpayers Act."

Amended by Chapter 312, 2009 General Session

**59-10-1402. Definitions.**

As used in this part:

- (1) "Addition, subtraction, or adjustment" means:
  - (a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:
    - (i) an addition to unadjusted income described in Section 59-7-105; or
    - (ii) a subtraction from unadjusted income described in Section 59-7-106;
  - (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or S corporation for federal income tax purposes:
    - (i) an addition to or subtraction from adjusted gross income described in Section 59-10-114; or
    - (ii) an adjustment to adjusted gross income described in Section 59-10-115; or
    - (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal income tax purposes:
      - (i) an addition to or subtraction from unadjusted income described in Section 59-10-202; or
      - (ii) an adjustment to unadjusted income described in Section 59-10-209.1.
- (2) "Business income" means income arising from transactions and activity in the regular course of a pass-through entity's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the pass-through entity's regular trade or business operations.
- (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.
- (4) "Commercial domicile" means the principal place from which the trade or business of a business entity is directed or managed.
- (5) "Dependent beneficiary" means an individual who:
  - (a) is claimed as a dependent under Section 151, Internal Revenue Code, on another person's federal income tax return; and
  - (b) is a beneficiary of a trust that is a pass-through entity.
- (6) "Derived from or connected with Utah sources" means:
  - (a) if a pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or
  - (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, derived from or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.
- (7) "Nonbusiness income" means all income of a pass-through entity other than

business income.

(8) "Nonresident business entity" means a business entity that does not have its commercial domicile in this state.

(9) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer that is a:

- (a) nonresident individual; or
- (b) nonresident business entity.

(10) "Pass-through entity" means a business entity that is:

(a) the following if classified as a partnership for federal income tax purposes:

- (i) a general partnership;
- (ii) a limited liability company;
- (iii) a limited liability partnership; or
- (iv) a limited partnership;
- (b) an S corporation;

(c) an estate or trust with respect to which the estate's or trust's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; or

(d) a business entity similar to Subsections (10)(a) through (c):

(i) with respect to which the business entity's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; and

(ii) as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Pass-through entity taxpayer" means a resident or nonresident individual, a resident or nonresident business entity, or a resident or nonresident estate or trust:

(a) that is:

- (i) for a general partnership, a partner;
- (ii) for a limited liability company, a member;
- (iii) for a limited liability partnership, a partner;
- (iv) for a limited partnership, a partner;
- (v) for an S corporation, a shareholder;
- (vi) for an estate or trust described in Subsection (10)(c), a beneficiary; or
- (vii) for a business entity described in Subsection (10)(d), a member, partner, shareholder, or other title designated by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) to which the income, gain, loss, deduction, or credit of a pass-through entity is passed through.

(12) "Resident business entity" means a business entity that is not a nonresident business entity.

(13) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that is a:

(a) resident individual; or

- (b) resident business entity.

(14) "Return" means a return that a pass-through entity taxpayer files:

- (a) for a pass-through entity taxpayer that is classified as a C corporation for

federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

(b) for a pass-through entity taxpayer that is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

(15) "S corporation" is as defined in Section 1361, Internal Revenue Code.

(16) "Share of income, gain, loss, deduction, or credit of a pass-through entity" means:

(a) for a pass-through entity except for a pass-through entity that is an S corporation:

(i) for a resident pass-through entity taxpayer, the resident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through entity as determined under Section 704 et seq., Internal Revenue Code; and

(ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through entity:

(A) as determined under Section 704 et seq., Internal Revenue Code; and

(B) derived from or connected with Utah sources; or

(b) for an S corporation:

(i) for a resident pass-through entity taxpayer, the resident pass-through entity taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as determined under Sec. 1366 et seq., Internal Revenue Code; or

(ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

(A) as determined under Section 1366 et seq., Internal Revenue Code; and

(B) derived from or connected with Utah sources.

(17) "Statement of dependent beneficiary income" means a statement:

(a) signed by the person who claims a dependent beneficiary as a dependent under Section 151, Internal Revenue Code, on the person's federal income tax return for the taxable year;

(b) attesting that the dependent is a dependent beneficiary; and

(c) indicating that the person expects that the dependent beneficiary's adjusted gross income for the taxable year will not exceed the basic standard deduction for the dependent beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year.

Amended by Chapter 95, 2012 General Session

**59-10-1403. Income tax treatment of a pass-through entity -- Returns -- Classification same as under Internal Revenue Code.**

(1) Subject to Subsection (3), a pass-through entity is not subject to a tax imposed by this chapter.

(2) The income, gain, loss, deduction, or credit of a pass-through entity shall be

passed through to one or more pass-through entity taxpayers as provided in this part.

(3) A pass-through entity is subject to the return filing requirements of Section 59-10-507.

(4) A pass-through entity that transacts business in the state shall be classified for purposes of taxation under this title in the same manner as the pass-through entity is classified for federal income tax purposes.

Amended by Chapter 312, 2009 General Session

**59-10-1403.1. Income tax treatment of a pass-through entity taxpayer --  
Return filing requirements.**

(1) Subject to the other provisions of this part, a pass-through entity taxpayer is subject to taxation:

(a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes:

(i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a domestic corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

(ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer, as a foreign corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

(b) for a pass-through entity taxpayer that is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes:

(i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a resident estate, resident individual, resident partnership, resident S corporation, or resident trust is taxed under this chapter; or

(ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer, as a nonresident estate, nonresident individual, nonresident partnership, nonresident S corporation, or nonresident trust is taxed under this chapter.

(2) A pass-through entity taxpayer is subject to taxation on the pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity.

(3) (a) Subject to Subsection (3)(b)(iii), a resident pass-through entity taxpayer shall file a return:

(i) if the resident pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, as a domestic corporation under Chapter 7, Corporate Franchise and Income Taxes; or

(ii) if the resident pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, as a resident estate, resident individual, resident partnership, resident S corporation, or resident trust under this chapter.

(b) (i) Except as provided in Subsection (3)(b)(ii) and subject to Subsection (3)(b)(iii) or (iv), a nonresident pass-through entity taxpayer shall file a return:

(A) if the nonresident pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, as a foreign corporation under Chapter 7,

Corporate Franchise and Income Taxes; or

(B) if the nonresident pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, as a nonresident estate, nonresident individual, nonresident partnership, nonresident S corporation, or nonresident trust under this chapter.

(ii) A nonresident pass-through entity taxpayer is not required to file a return if:

(A) the nonresident pass-through entity taxpayer does not have:

(I) for a nonresident pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, unadjusted income as defined in Section 59-7-101 derived from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;

(II) for a nonresident pass-through entity taxpayer that is classified as an individual, partnership, or S corporation for federal income tax purposes, adjusted gross income derived from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity; or

(III) for a nonresident pass-through entity taxpayer that is classified as an estate or a trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103 derived from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;

(B) the nonresident pass-through entity taxpayer does not seek to claim a tax credit allowed against a tax imposed under:

(I) Chapter 7, Corporate Franchise and Income Taxes; or

(II) this chapter;

(C) the pass-through entity pays or withholds a tax on behalf of the nonresident pass-through entity taxpayer and remits that tax to the commission:

(I) in accordance with Section 59-10-1403.2; and

(II) if a nonresident pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, in an amount that is equal to or greater than the minimum tax under Section 59-7-104; and

(D) the nonresident pass-through entity taxpayer is not a member of a unitary group as defined in Section 59-7-101 that is required to file a return in this state.

(iii) A nonresident pass-through entity taxpayer that is not otherwise required to file a return under this Subsection (3) may file a return under:

(A) Chapter 7, Corporate Franchise and Income Taxes; or

(B) this chapter.

(iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for a pass-through entity taxpayer, except for a pass-through entity taxpayer who is a resident individual, to file a return under this section if two or more pass-through entities pay or withhold a tax in accordance with Section 59-10-1403.2 on behalf of the pass-through entity taxpayer.

Enacted by Chapter 312, 2009 General Session

**59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a pass-through entity taxpayer -- Exceptions to payment or withholding requirement -- Procedures and requirements -- Failure to pay or withhold a tax on behalf of a pass-through entity taxpayer.**

(1) (a) Except as provided in Subsection (1)(b), for a taxable year, a pass-through entity shall pay or withhold a tax:

(i) on:

(A) the business income of the pass-through entity; and

(B) the nonbusiness income of the pass-through entity derived from or connected with Utah sources; and

(ii) on behalf of a pass-through entity taxpayer.

(b) A pass-through entity is not required to pay or withhold a tax under Subsection (1)(a):

(i) on behalf of a pass-through entity taxpayer who is a resident individual;

(ii) if the pass-through entity is an organization exempt from taxation under Subsection 59-7-102(1)(a);

(iii) if the pass-through entity:

(A) is a plan under Section 401, 408, or 457, Internal Revenue Code; and

(B) is not required to file a return under Chapter 7, Corporate Franchise and Income Taxes, or this chapter; or

(iv) if the pass-through entity is a publicly traded partnership:

(A) as defined in Section 7704(b), Internal Revenue Code;

(B) that is classified as a partnership for federal income tax purposes; and

(C) that files an annual information return reporting the following with respect to each partner of the publicly traded partnership with income derived from or connected with Utah sources that exceeds \$500 in a taxable year:

(I) the partner's name;

(II) the partner's address;

(III) the partner's taxpayer identification number; and

(IV) other information required by the commission.

(2) (a) Subject to Subsection (2)(b), the tax a pass-through entity shall pay or withhold on behalf of a pass-through entity taxpayer for a taxable year is an amount:

(i) determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) that the commission estimates will be sufficient to pay the tax liability of the pass-through entity taxpayer under this chapter with respect to the income described in Subsection (1)(a)(i) of that pass-through entity for the taxable year.

(b) The rules the commission makes in accordance with Subsection (2)(a):

(i) except as provided in Subsection (2)(c):

(A) shall:

(I) for a pass-through entity except for a pass-through entity that is an S corporation, take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule for reporting partners' distributive share items as part of the federal income tax return for the pass-through entity; or

(II) for a pass-through entity that is an S corporation, take into account items of



income, gain, loss, deduction, and credit as reconciled on the schedule for reporting shareholders' pro rata share items as part of the federal income tax return for the pass-through entity; and

(B) notwithstanding Subsection (2)(b)(ii)(D), take into account the refundable tax credit provided in Section 59-6-102; and

(ii) may not take into account the following items if taking those items into account does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under this chapter for the taxable year:

(A) a capital loss;

(B) a passive loss;

(C) another item of deduction or loss if that item of deduction or loss is generally subject to significant reduction or limitation in calculating:

(I) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, unadjusted income as defined in Section 59-7-101;

(II) for a pass-through entity that is classified as an individual, partnership, or S corporation for federal income tax purposes, adjusted gross income; or

(III) for a pass-through entity that is classified as an estate or a trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103; or

(D) a tax credit allowed against a tax imposed under:

(I) Chapter 7, Corporate Franchise and Income Taxes; or

(II) this chapter.

(c) The rules the commission makes in accordance with Subsection (2)(a) may establish a method for taking into account items of income, gain, loss, deduction, or credit of a pass-through entity if:

(i) for a pass-through entity except for a pass-through entity that is an S corporation, the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit on the schedule for reporting partners' distributive share items as part of the federal income tax return for the pass-through entity; or

(ii) for a pass-through entity that is an S corporation, the pass-through entity does not reconcile the items of income, gain, loss, deduction, or credit on the schedule for reporting shareholders' pro rata share items as part of the federal income tax return for the pass-through entity.

(3) A pass-through entity shall remit to the commission the tax the pass-through entity pays or withholds on behalf of a pass-through entity taxpayer under this section:

(a) on or before the due date of the pass-through entity's return, not including extensions; and

(b) on a form provided by the commission.

(4) A pass-through entity shall provide a statement to a pass-through entity taxpayer on behalf of whom the pass-through entity pays or withholds a tax under this section showing the amount of tax the pass-through entity pays or withholds under this section for the taxable year on behalf of the pass-through entity taxpayer.

(5) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an amount under this section for a taxable year from a pass-through entity and shall waive any penalty and interest on that amount if:

(a) the pass-through entity fails to pay or withhold the tax on the amount as

required by this section on behalf of the pass-through entity taxpayer;

(b) the pass-through entity taxpayer:

(i) files a return on or before the due date for filing the pass-through entity's return, including extensions; and

(ii) on or before the due date including extensions described in Subsection (5)(b)(i), pays the tax on the amount for the taxable year:

(A) if the pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

(B) if the pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, under this chapter; and

(c) the pass-through entity applies to the commission.

(6) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an amount under this section for a taxable year from a pass-through entity that is a trust and shall waive any penalty and interest on that amount if:

(a) the pass-through entity fails to pay or withhold the tax on the amount as required by this section on behalf of a dependent beneficiary;

(b) the pass-through entity applies to the commission; and

(c) (i) the dependent beneficiary complies with the requirements of Subsection (5)(b); or

(ii) (A) the dependent beneficiary's adjusted gross income for the taxable year does not exceed the basic standard deduction for the dependent beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year; and

(B) the trustee of the trust retains a statement of dependent beneficiary income on behalf of the dependent beneficiary.

(7) If a pass-through entity would have otherwise qualified for a waiver of a penalty and interest under Subsection (6), except that the trustee of a trust has not applied to the commission as required by Subsection (6)(b) or retained the statement of dependent beneficiary income required by Subsection (6)(c)(ii)(B), it is a rebuttable presumption in an audit that the pass-through entity would have otherwise qualified for the waiver of the penalty and interest under Subsection (6).

Amended by Chapter 95, 2012 General Session

**59-10-1404. Character of an item of income, gain, loss, deduction, or credit.**

Regardless of whether or how an item of income, gain, loss, deduction, or credit is characterized for federal income tax purposes, that item of income, gain, loss, deduction, or credit is from the same source and incurred in the same manner for a pass-through entity taxpayer as if the item of income, gain, loss, deduction, or credit is:

(1) realized directly from the source from which the item of income, gain, loss, deduction, or credit is realized by the pass-through entity; or

(2) incurred in the same manner as incurred by the pass-through entity.

Amended by Chapter 312, 2009 General Session

**59-10-1404.5. Resident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity.**

(1) In determining the taxable income of a resident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in accordance with this section.

(2) For a resident pass-through entity taxpayer of a pass-through entity except for a pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:

(a) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the resident pass-through entity taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:

- (i) for federal income tax purposes; and
- (ii) determined under Section 704 et seq., Internal Revenue Code; or

(b) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the resident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit:

- (i) relating to the pass-through entity generally;
- (ii) for federal income tax purposes; and
- (iii) under Section 704 et seq., Internal Revenue Code.

(3) For a resident pass-through entity taxpayer of a pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:

(a) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the resident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:

- (i) for federal income tax purposes; and
- (ii) determined under Section 1366 et seq., Internal Revenue Code; or

(b) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the resident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:

- (i) relating to the pass-through entity generally;
- (ii) for federal income tax purposes; and
- (iii) under Section 1366 et seq., Internal Revenue Code.

Enacted by Chapter 312, 2009 General Session

**59-10-1405. Nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss,**

**deduction, or credit of a pass-through entity -- In determining source of nonresident pass-through entity taxpayer's income certain provisions of pass-through entity agreement may not be considered -- Rulemaking authority.**

(1) (a) Except as provided in Subsection (3), in determining the taxable income of a nonresident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in accordance with this Subsection (1).

(b) For a nonresident pass-through entity taxpayer of a pass-through entity except for a pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:

(i) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the nonresident pass-through entity taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:

- (A) for federal income tax purposes;
- (B) determined under Section 704 et seq., Internal Revenue Code; and
- (C) derived from or connected with Utah sources; or

(ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit:

- (A) relating to the pass-through entity generally;
- (B) for federal income tax purposes;
- (C) under Section 704 et seq., Internal Revenue Code; and
- (D) derived from or connected with Utah sources.

(c) For a nonresident pass-through entity taxpayer of a pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:

(i) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:

- (A) for federal income tax purposes;
- (B) determined under Section 1366 et seq., Internal Revenue Code; and
- (C) derived from or connected with Utah sources; or

(ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:

- (A) relating to the pass-through entity generally;
- (B) for federal income tax purposes;
- (C) under Section 1366 et seq., Internal Revenue Code; and
- (D) derived from or connected with Utah sources.

(2) In determining the source of a nonresident pass-through entity taxpayer's

income, the following provisions in a pass-through entity agreement may not be considered:

(a) a provision that allocates to the nonresident pass-through entity taxpayer, as income, gain, or credit from a source outside this state, a greater proportion of the nonresident pass-through entity taxpayer's share of income, gain, or credit of the pass-through entity than the ratio of income, gain, or credit of the pass-through entity from sources outside this state to income, gain, or credit of the pass-through entity from all sources; or

(b) a provision that allocates to the nonresident pass-through entity taxpayer a greater proportion of an item of loss or deduction of the pass-through entity derived from or connected with Utah sources than the taxpayer's share of loss or deduction generally:

(i) relating to the pass-through entity; and

(ii) for federal income tax purposes.

(3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, authorize the use of a calculation other than the calculation provided in Subsection (1), for determining a nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity derived from or connected with Utah sources if:

(a) the nonresident pass-through entity taxpayer applies to the commission; and

(b) the commission finds that the use of the calculation is appropriate and equitable.

Amended by Chapter 312, 2009 General Session